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TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1937

No. 504

NATIONAL LABOR RELATIONS BOARD, PETITIONER

vs.

PACIFIC GREYHOUND LINES, INC.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR CERTIORARI FILED OCTOBER 14, 1937
CERTIORARI GRANTED NOVEMBER 22, 1937

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1937

No. 504

NATIONAL LABOR RELATIONS BOARD, PETITIONER

vs.

PACIFIC GREYHOUND LINES, INC.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

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Before the National Labor Relations Board, Twentieth Region

Case No. XX-C-14

IN THE MATTER OF PACIFIC GREYHOUND LINES, INC., AND BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN

Complaint

It having been charged by the Brotherhood of Locomotive Firemen and Enginemen, 861 Pacific Building, San Francisco, California, that the Pacific Greyhound Lines, Inc., hereinafter called the respondent, has engaged in and is now engaging in certain unfair labor practices affecting commerce as set forth and defined in the National Labor Relations Act, approved July 5, 1935, the National Labor Relations Board by the Regional Director for the Twentieth Region, as agent of the National Labor Relations Board designated by the National Labor Relations Board Rules and Regulations, Series 1, as amended, Article IV, section 1, hereby alleges the following:

I

The respondent, Pacific Greyhound Lines, Inc., is and has been since the 12th day of April, 1930, a corporation organized under and existing by virtue of the laws of the State of California, having its principal office in the City and County of San Francisco.

II

The respondent is and at all times herein mentioned has been a common carrier engaged in the business of transporting by motor carrier for hire, passengers and baggage of passengers, and in the same vehicle with passengers, express, mail, and newspapers, both for the general public and under contract with connecting railway and express companies. Respondent in the course and conduct of its aforesaid business, regularly operates an integrated system of motor bus routes of approximately 7,000 miles in length, in, among, and between the several states of Oregon, California, Nevada, Utah, Arizona, New Mexico, and Texas.

III

The aforesaid operations of respondent occur in the course and current of commerce among the several states, are an integral part of the operations of instrumentalities of such commerce, and constitute commerce and transportation among the several states.

IV

The respondent is an integral part of the nation-wide integrated transportation system known as The Greyhound Lines, said system

being engaged in the interstate and foreign transportation for hire of persons and property by motor buses. The affiliation of respondent with said Greyhound Lines is effectuated through ownership by Pacific Greyhound Corporation, a Delaware corporation, of 100% of the outstanding capital stock of respondent, said Pacific Greyhound Corporation being in turn controlled by the Greyhound Corporation, a Delaware Corporation, through ownership of a majority of its voting capital stock. By means of such stock ownership by said Greyhound Corporation, and by jointly soliciting, advertising, selling, and providing transportation for the continuous carriage of passengers, mail, express, and newspapers, and through joint traffic, operating and facility arrangements, all of the motor carrier companies composing said Greyhound Lines are operated as a unified and integrated system of transportation throughout the United States.

V

The Brotherhood of Locomotive Firemen and Enginemen is, and at all times herein mentioned has been, a lawful labor organization, existing for the purpose in whole or in part of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, and other conditions of employment.

VI

The respondent by its officers and agents, while engaged in its operations as described above, did, at San Francisco, California, on or about the 13th day of March, 1936, discharge V. R. Sager, a driver employed by respondent in Division 4 of its lines, and has at all times since said date refused to reemploy said V. R. Sager.

VII

The respondent discharged and refuses to reemploy said V. R. Sager for the reason that said V. R. Sager joined and assisted a labor organization known as Brotherhood of Locomotive Firemen and Enginemen, and engaged in concerted activities with other employees in said Division 4, and elsewhere, for the purpose of collective bargaining and other mutual aid and protection.

VIII

The respondent, by its officers, agents and employees, while engaged in its operations as described above, has, at numerous times since July 5, 1935, down to the date of the issuance of this complaint, urged, persuaded and warned its employees at San Francisco, California and elsewhere on said Division 4, to refrain from becoming or remaining members of said Brotherhood of Locomotive Firemen and Enginemen, and has threatened its said employees with discharge if they became or remained members thereof.

IX

The respondent, by its officers, agents and employees, while engaged in its operations as described above, has, from July 5, 1935, down to the date of the issuance of this complaint, by sundry and divers acts of intimidation and coercion, interfered with, restrained and coerced its said employees at San Francisco, California and elsewhere in said Division 4, from joining or assisting said Brotherhood of Locomotive Firemen and Enginemen, a labor organization of their own choice, and from engaging in concerted activities for the purpose of collective bargaining and other mutual aid and protection.

X

Prior to July 5, 1935, respondent initiated and formed, and at all times since said date has dominated, interfered with and contributed support to a labor organization of its operating employees known as "Pacific Greyhound Drivers' Association."

6

XI

By its discharge of and its refusal to reemploy said V. R. Sager, as above set forth, and by urging, persuading, and warning its employees against becoming and remaining members of said Brotherhood of Locomotive Firemen and Enginemen, as above set forth, and by threatening said employees with discharge if they became or remained members thereof, as above set forth, and by interfering with, restraining and coercing its employees, as above set forth, and by forming and initiating, dominating, interfering with, and contributing support to said Pacific Greyhound Drivers' Association as above set forth, and by all of said acts, and each of them, the respondent did interfere with, restrain and coerce its employees in the exercise of the rights guaranteed in Section 7 of the National Labor Relations Act, and by all of said acts and each of them, has thereby engaged in and is thereby engaging in unfair labor practices within the meaning of Section 8, Subdivision (1) of said Act.

XII

By its discharge of and its refusal to reemploy said V. R. Sager, as above set forth, the respondent did discriminate and is discriminating in regard to hire and tenure of employment of the said V. R. Sager, and did thus discourage, and is thus discouraging, membership in the Brotherhood of Locomotive Firemen and Enginemen, did thereby engage in, and is thereby engaging in, unfair labor practices within the meaning of Section 8, Subdivision (3) of said Act.

XIII

By forming and initiating, and by dominating, interfering with and contributing support to said Pacific Greyhound Drivers' Association, as above set forth, the respondent did thereby engage in, and is thereby engaging in unfair labor practices within the meaning of Section 8, Subdivision (2) of said act.

XIV

The aforesaid unfair labor practices occur in the course and current of commerce among the several states, and, on the basis of experience in respondent's lines and affiliated lines, and in the same and other industries, have led and tend to lead to labor disputes and other forms of idustrial unrest which burden and obstruct commerce among the several states and the free flow thereof, and which in the field of transportation have the effect of impairing the safety and efficiency of the instrumentalities of transportation among the several states.

XV

The aforesaid acts of respondent, set forth in paragraphs VI, VII, VIII, IX, X, XI, XII, XIII, and XIV hereof, constitute unfair labor practices affecting commerce within the meaning of Section 8, Sections (1), (2), and (3) and Section 2, subsections (6) and (7) of the National Labor Relations Act.

Wherefore, the National Labor Relations Board, on the 29th day of May 1936, issues its complaint against the Pacific Greyhound Lines, Inc., respondent herein.

NOTICE OF HEARING

Please take notice, that on the 15th day of June 1936, at 10:00 o'clock in the forenoon, at Room 265, Postoffice Building, Seventh and Mission Streets, San Francisco, California, a hearing will be conducted before the National Labor Relations Board, by a Trial Examiner to be designated by it in accordance with its Rules and Regulations, Series 1, as amended, on the allegations set forth in the complaint attached hereto, at which time and place you will have the right to appear in person or otherwise, and give testimony.

You are further notified that you have the right to file with the Regional Director for the Twentieth (20th) Region, acting in this matter as the agent of the National Labor Relations Board, an answer to the complaint attached hereto, on or before the 10th day of June 1936.

Enclosed herewith for your information is a copy of the Rules and Regulations, Series 1, as amended, made and published by the National Labor Relations Board, pursuant to authority granted in the National Labor Relations Act. Your attention is particularly directed to Article II of said Rules and Regulations.

In witness whereof, the National Labor Relations Board has caused this, its complaint and Notice of Hearing to be signed by the Regional Director for the Twentieth (20th) Region on the 29th day of May 1936.

ALICE M. ROSSITER,
Regional Director for the Twentieth (20th) Region.

Before the National Labor Relations Board, Twentieth Region

Case No. XX–C–14

IN THE MATTER OF PACIFIC GREYHOUND LINES, INC., AND BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN

Amended complaint

It having been charged by the Brotherhood of Locomotive Firemen and Enginemen, 861 Pacific Building, San Francisco, California, that the Pacific Greyhound Lines, Inc., hereinafter called the respondent, has engaged in and is now engaging in certain unfair labor practices affecting commerce as set forth and defined in the National Labor Relations Act, approved July 5, 1935, the National Labor Relations Board by the Regional Director for the Twentieth Region, as agent of the National Labor Relations Board designated by the National Labor Relations Board Rules and Regulations, Series 1, as amended, Article IV, section 1, hereby alleges the following:

I

The respondent, Pacific Greyhound Lines, Inc., is and has been since the 12th day of April 1930 a corporation organized under and existing by virtue of the laws of the State of California, having its principal office in the City and County of San Francisco.

II

The respondent is and at all times herein mentioned has been a common carrier engaged in the business of transporting by motor carrier for hire, passengers and baggage of passengers, and in the same vehicle with passengers, express, mail, and newspapers, both for the general public and under contract with connecting railway and express companies. Respondent in the course and conduct of its aforesaid business regularly operates an integrated system of motor bus routes of approximately 7,099 miles in length, in, among, and between the several states of Oregon, California, Nevada, Utah, Arizona, New Mexico, and Texas.

III

The aforesaid operations of respondent occur in the course and current of commerce among the several states, are an integral part

of the operations of instrumentalities of such commerce, and constitute commerce and transportation among the several states.

IV

The respondent is an integral part of the nation-wide integrated transportation system known as The Greyhound Lines, said system being engaged in the interstate and foreign transportation for hire of persons and property by motor buses. The affiliation of respondent with said Greyhound Lines is effectuated through ownership by Pacific Greyhound Corporation, a Delaware corporation, of 100% of the outstanding capital stock of respondent, said Pacific Greyhound Corporation being in turn controlled by the Greyhound Corporation, a Delaware Corporation, through ownership of a majority of its voting capital stock. By means of such stock ownership by said Greyhound Corporation, and by jointly soliciting, advertising, selling, and providing transportation for the continuous carriage of passengers, mail, express, and newspapers, and through joint traffic, operating, and facility arrangements, all of the motor carrier companies composing said Greyhound Lines are operated as a unified and integrated system of transportation throughout the United States.

V

The Brotherhood of Locomotive Firemen and Enginemen is, and at all times herein mentioned has been, a lawful labor organization, existing for the purpose in whole or in part of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, and other conditions of employment.

VI

The respondent by its officers and agents, while engaged in its operations as described above, did, at San Francisco, California, on or about the 13th day of March 1936, discharge V. R. Sager, a driver employed by respondent on Division 4 of its lines, and has at all times since said date refused to reemploy said V. R. Sager.

VII

The respondent discharged and refuses to reemploy said V. R. Sager for the reason that said V. R. Sager joined and assisted a labor organization known as Brotherhood of Locomotive Firemen and Enginemen, and engaged in concerted activities with other employees in said Division 4, and elsewhere, for the purpose of collective bargaining and other mutual aid and protection.

VIII

The respondent, by its officers, agents and employees, while engaged in its operations as described above, has, at numerous times

since July 5, 1935, down to the date of the issuance of this complaint, urged, persuaded, and warned its employees at San Francisco, California and on Divisions 4, 5, and 6 of its said lines, to refrain from becoming or remaining members of said Brotherhood of Locomotive Firemen and Enginemen, and has threatened its said employees with discharge if they became or remained members thereof.

IX

The respondent, by its officers, agents, and employees, while engaged in its operations as described above, has from July 5, 1935, down to the date of the issuance of this complaint, by sundry and divers acts of intimidation and coercion, interfered with, restrained, and coerced its said employees at San Francisco, California, and on Divisions 4, 5, and 6 of its said lines, from joining or assisting said Brotherhood of Locomotive Firemen and Enginemen, a labor organization of their own choice, and from engaging in concerted activities for the purpose of collective bargaining and other mutual aid and protection.

X

Prior to July 5, 1935, respondent initiated and formed, and at all times since said date has dominated, interfered with and contributed support to a labor organization of its operating employees known as "Pacific Greyhound Drivers' Association."

14

XI

By its discharge of and its refusal to reemploy said V. R. Sager, as above set forth, and by urging, persuading and warning its employees against becoming and remaining members of said Brotherhood of Locomotive Firemen and Enginemen, as above set forth, and by threatening said employees with discharge if they became or remained members thereof, as above set forth, and by interfering with, restraining and coercing its employees, as above set forth, and by forming and initiating, dominating, interfering with, and contributing support to said Pacific Greyhound Drivers' Association as above set forth, and by all of said acts, and each of them, the respondent did interfere with, restrain and coerce its employees in the exercise of the rights guaranteed in Section 7 of the National Labor Relations Act, and by all of said acts and each of them, has thereby engaged in and is thereby engaging in unfair labor practices within the meaning of Section 8, Subdivision (1) of said Act.

XII

By its discharge of and its refusal to reemploy said V. R. Sager, as above set forth, the respondent did discriminate and is discriminating in regard to hire and tenure of employment of the said V. R. Sager, and did thus discourage, and is thus discouraging,

membership in the Brotherhood of Locomotive Firemen and Enginemen, did thereby engage in, and is thereby engaging in, unfair labor practices within the meaning of Section 8, Subdivision (3) of said Act.

XIII

By forming and initiating, and by dominating, interfering with and contributing support to said Pacific Greyhound Drivers' Association, as above set forth, the respondent did thereby engage in, and is thereby engaging in unfair labor practices within the meaning of Section 8, Subdivision (2) of said act.

XIV

The aforesaid unfair labor practices occur in the course and current of commerce among the several states, and, on the basis of experience in respondent's lines and affiliated lines, and in the same and other industries, have led and tend to lead to labor disputes and other forms of industrial unrest which burden and obstruct commerce among the several states and the free flow thereof, and which in the field of transportation have the effect of impairing the safety and efficiency of the instrumentalities of transportation among the several states.

XV

The aforesaid acts of respondent, set forth in paragraphs VI, VII, VIII, IX, X, XI, XII, XIII, and XIV hereof, constitute unfair labor practices affecting commerce within the meaning of Section 8, Sections (1), (2), and (3) and Section 2, subsections (6) and (7) of the National Labor Relations Act.

Wherefore, the National Labor Relations Board, on the 10th day of June 1936, issues its amended complaint against the Pacific Greyhound Lines, Inc., respondent herein.

16 NOTICE OF HEARING

Please take notice, that on the 29th day of June 1936, at 10:00 o'clock in the forenoon, at Room 265, Postoffice Building, Seventh and Mission Streets, San Francisco, California, a hearing will be conducted before the National Labor Relations Board, by its agent, Henry Eickhoff, Jr., designated by it in accordance with its Rules and Regulations, Series 1, as amended, on the allegations set forth in the amended complaint attached hereto, at which time and place you will have the right to appear in person or otherwise, and give testimony.

You are further notified that you have the right to file with the Regional Director for the Twentieth (20th) Region, acting in this matter as the agent of the National Labor Relations Board, an answer to the amended complaint attached hereto, on or before the 20th day of June 1936.

You have heretofore been furnished with a copy of the Rules and Regulations, Series 1, as amended, made and published by the National Labor Relations Board, pursuant to authority granted in the National Labor Relations Act. Your attention is particularly directed to Article II of said Rules and Regulations.

In witness whereof, the National Labor Relations Board has caused this, its amended complaint and Notice of Hearing to be signed by the Regional Director for the Twentieth (20th) Region on the 10th day of June 1936.

ALICE M. ROSENTER,
Regional Director for the Twentieth (20th) Region. B. E.

17 Before the National Labor Relations Board, Twentieth Region

Case No. XX-C-14

IN THE MATTER OF PACIFIC GREYHOUND LINES, INC., AND BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN

Notice of continuance of hearing

To all parties and persons interested in the above entitled matter: Notice is hereby given that the hearing in the above entitled matter, heretofore set for Monday, June 29, 1936, at 10:00 a. m. at Room 265, Post Office Building, Seventh and Mission Streets, San Francisco, California, has been continued to Tuesday, July 28, 1936, at 10:00 a. m. at Room 709 Grant Building, 1095 Market Street, San Francisco, California.

Dated this 26th day of June 1936.

ALICE M. ROSENTER,
Regional Director for the Twentieth Region.
By Bertram Edises,
BERTRAM EDISES,
Regional Attorney.

18 Before the National Labor Relations Board, Twentieth Region

Case No. XX-C-14

IN THE MATTER OF PACIFIC GREYHOUND LINES, INC., AND BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN

Affidavit of service

COUNTY OF SAN FRANCISCO,
State of California, ss.

Winifred Gay, Junior Clerk-Stenographer, Twentieth Region, being duly sworn, deposes and says: That she is a person over the age of twenty-one years; that on the 26th day of June 1936, as agent for the National Labor Relations Board, she served upon each of the parties and persons hereinafter mentioned, a Notice of Continu-

ance of Hearing in the above entitled matter (a true and exact copy of which is attached hereto, marked "Exhibit A," and made a part hereof) by depositing in a United States Post Office in the City and County of San Francisco, State of California, postage fully prepaid, sealed envelopes, each of which contained a copy of said Notice of Continuance of Hearing, said envelopes being addressed to the parties and persons hereinbelow set out, at the places set beneath their respective names, to wit:

Mr. W. E. Travis, President, Pacific Greyhound Lines, Inc., 201 Pine Street, San Francisco. Special Delivery—Registered Mail—Return Receipt Requested.

Mr. S. C. Phillips, General Organizer, Brotherhood of Locomotive Firemen and Enginemen, 861 Pacific Building, San Francisco. Special Delivery.

Mr. D. B. Robertson, President, Brotherhood of Locomotive Firemen and Enginemen, 318 Keith Building, Cleveland, Ohio. Air Mail—Special Delivery.

Mr. Henry Eickhoff, Jr., Attorney at Law, Mills Building, San Francisco.

Judge A. C. Lucas, Pacific Greyhound Lines, Inc., 201 Pine Street, San Francisco.

WINIFRED GAY.

Subscribed and sworn to before me this 26th day of June 1936.

CHARLES HEMENWAY UPTON,
Notary Public in and for the City and County of San Francisco, State of California.

My commission expires Jan. 16, 1939.

Before the National Labor Relations Board, Twentieth Region

Case No. XX-C-14

IN THE MATTER OF PACIFIC GREYHOUND LINES, INC., AND BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN

NOTICE OF CONTINUANCE OF HEARING

To all parties and persons interested in the above entitled matter: Notice is hereby given that the hearing in the above entitled matter, heretofore set for Monday, June 29, 1936, at 10:00 a. m. at Room 265, Post Office Building, Seventh and Mission Streets, San Francisco, California, has been continued to Thursday, July 23, 1936, at 10:00 a. m. at Room 709 Grant Building, 1095 Market Street, San Francisco, California.

Dated this 26th day of June, 1936.

ALICE M. ROSENTER,
Regional Director for the Twentieth Region.
By /s/ BERTRAM EDISES,
Regional Attorney.

21 Before the National Labor Relations Board

Case No. XXI–C–75

IN THE MATTER OF PACIFIC GREYHOUND LINES, INC. AND BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN, LOCAL No. 97

June 1936.

At a regular meeting of the National Labor Relations Board, held at its office in the City of Washington, D. C., on the 25th day of June, 1936.

Present: John M. Carmody, Edwin S. Smith.

A charge having been duly filed by the Brotherhood of Locomotive Firemen and Enginemen with the Regional Director for the 21st Region on May 27, 1936, charging that the Pacific Greyhound Lines, Inc., has engaged in certain specified unfair labor practices affecting commerce, and a charge having been duly filed by the Brotherhood of Locomotive Firemen and Enginemen with the Regional Director for the 20th Region on April 7, 1936, charging that the Pacific Greyhound Lines, Inc., has engaged in certain specified unfair labor practices affecting commerce, and the National Labor Relations Board deeming it necessary in order to effectuate the purposes of the National Labor Relations Act,

It is hereby ordered pursuant to Article 2, Section 37 (c) of the National Labor Relations Board's Rules and Regulations, Series I, as amended, that the charge filed against the Pacific Greyhound Lines, Inc. with the Regional Director for the 21st Region on May 27, 1936, by the Brotherhood of Locomotive Firemen and Enginemen be, and hereby is, transferred for the purpose of consolidation with the proceeding which has been instituted against the Pacific Greyhound Lines, Inc., in the 20th Region by the filing of a charge by the Brotherhood of Locomotive Firemen and Enginemen on April 7, 1936, and that such transfer and consolidation be for all purposes.

22

By direction of the Board.

Benedict Wolf,
BENEDICT WOLF,
Secretary.

23 National Labor Relations Board

I, Benedict Wolf, Secretary of the National Labor Relations Board, and official custodian of its records, do hereby certify that attached is a full, true, and complete copy of: In the Matter of Pacific Greyhound Lines, Inc. and Brotherhood of Locomotive Firemen and Enginemen, Local No. 97—Case XXI–C–75. In witness whereof, I have hereunto subscribed my name and caused the seal of the National Labor Relations Board to be affixed this 3d day of July, A. D. 1936, at Washington, D. C.

[SEAL] BENEDICT WOLF,
Secretary.

24 Before the National Labor Relations Board,

Case No. XXI–C–75

In the Matter of Pacific Greyhound Lines, Inc., and Brotherhood of Locomotive Firemen and Enginemen, Local No. 97

At a regular meeting of the National Labor Relations Board, held at its office in the City of Washington, D. C., on the 29th day of June, 1936.

Present: John M. Carmody, Edwin S. Smith.

Order designating trial examiner

A charge having been filed in this matter, and it having appeared to the Regional Director of the 21st Region that a proceeding in respect thereto should be instituted, and the Board having considered the matter and being advised in the premises,

It is hereby ordered that Charles A. Wood act as Trial Examiner in the above case and perform all the duties and exercise all the powers granted to trial examiners under the Rules and Regulations—Series 1 as amended of the National Labor Relations Board.

By direction of the Board:

Benedict Wolf,
Benedict Wolf,
Secretary.

25 National Labor Relations Board

I, Benedict Wolf, Secretary of the National Labor Relations Board, and official custodian of its records, do hereby certify that attached is a full, true, and complete copy of: Order Designating Trial Examiner, in the matter of Pacific Greyhound Lines, Inc., and Brotherhood of Locomotive Firemen and Enginemen—Case XX–C–14. In witness whereof, I have hereunto subscribed my name and caused the seal of the National Labor Relations Board to be affixed this 1st day of July A. D. 1936, at Washington, D. C.

[seal.]

Benedict Wolf,
Secretary.

26 Before the National Labor Relations Board

Case No. XX–C–14

In the Matter of Pacific Greyhound Lines, Inc., and Brotherhood of Locomotive Firemen and Enginemen

At a regular meeting of the National Labor Relations Board, held at its office in the City of Washington, D. C., on the 29th day of June, 1936.

Present: John M. Carmody, Edwin S. Smith.

ORDER DESIGNATING TRIAL EXAMINER

A charge having been filed in this matter, and it having appeared to the Regional Director of the 20th Region that a proceeding in respect thereto should be instituted, and the Board having considered the matter and being advised in the premises,

It is hereby ordered that Charles A. Wood act as Trial Examiner in the above case, in place and stead of Henry Eickhoff, Jr., and perform all the duties and exercise all the powers granted to trial examiners under the Rules and Regulations—Series 1, as amended, of the National Labor Relations Board.

By direction of the Board:

Benedict Wolf,
BENEDICT WOLF,
Secretary.

27 Before the National Labor Relations Board, Twentieth Region

Case No. XX–C–14 and Case No. XXI–C–75

IN THE MATTER OF PACIFIC GREYHOUND LINES, INC., AND BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN

Second amended and consolidated complaint

A charge having been duly filed by the Brotherhood of Locomotive Firemen and Enginemen, 861 Pacific Building, San Francisco, California, with the Regional Director for the Twentieth Region on April 7, 1936, charging that the Pacific Greyhound Lines, Inc., has engaged in certain specified unfair labor practices affecting commerce as set forth and defined in the National Labor Relations Act, approved July 5, 1935, and a charge having been duly filed by the Brotherhood of Locomotive Firemen and Enginemen, 520 Wilcox Building, Los Angeles, California, with the Regional Director for the Twenty-first Region on May 27, 1936, charging that the Pacific Greyhound Lines, Inc., has engaged in certain specified unfair labor practices affecting commerce as set forth and defined in the National Labor Relations Act, approved July 5, 1935, and the National Labor Relations Board, deeming it necessary in order to effectuate the purposes of the National Labor Relations Act, having on June 25, 1936, pursuant to Article II, Section 37 (c) of the National Labor Relations Board Rules and Regulations, Series 1, as amended, duly issued its Order that the charge filed by the Brotherhood of Locomotive Firemen and Enginemen against the Pacific Greyhound Lines, Inc., with the Regional Director for the Twenty-first Region be transferred for the purpose of consolidation with the proceeding which has been instituted by the filing of the charge by the Brotherhood of Locomotive Firemen and Enginemen against the Pacific Greyhound Lines, Inc., in the Twentieth Region, and that such transfer and consolidation be for all purposes,

Now comes the National Labor Relations Board, by the Regional Director for the Twentieth Region, as agent of the National Labor Relations Board designated by the National Labor Relations Board Rules and Regulations, Series 1, as amended, Article IV, Section 1, pursuant to said order of transfer and consolidation, and alleges the following:

I

The respondent, Pacific Greyhound Lines, Inc., is and has been since the 12th day of April 1930, a corporation organized under and existing by virtue of the laws of the State of California, having its principal office in the City and County of San Francisco, and likewise having offices in the City of Los Angeles, County of Los Angeles, California.

II

The respondent is and at all times herein mentioned has been a common carrier engaged in the business of transporting by motor carrier for hire, passengers and baggage of passengers, and in the same vehicle with passengers, express, mail, and newspapers, both for the general public and under contract with connecting railway and express companies. Respondent in the course and conduct of its aforesaid business, regularly operates an integrated system
29 of motor bus routes of approximately 7,099 miles in length, in, among, and between the several states of Oregon, California, Nevada, Utah, Arizona, New Mexico, and Texas.

III

The aforesaid operations of respondent occur in the course and current of commerce among the several states, are an integral part of the operations of instrumentalities of such commerce, and constitute commerce and transportation among the several states.

IV

The respondent is an integral part of the nationwide integrated transportation system known as The Greyhound Lines, said system being engaged in the interstate and foreign transportation for hire of persons and property by motor buses. The affiliation of respondent with said Greyhound Lines is effectuated through ownership by Pacific Greyhound Corporation, a Delaware corporation, of 100% of the outstanding capital stock of respondent, said Pacific Greyhound Corporation being in turn controlled by the Greyhound Corporation, a Delaware Corporation, through ownership of a majority of its voting capital stock. By means of such stock ownership by said Greyhound Corporation, and by jointly soliciting, advertising, selling, and providing transportating for the continuous carriage of passengers, mail, express, and newspapers, and through joint traffic,

operating and facility arrangements, all of the motor carrier companies composing said Pacific Greyhound Lines are operated as a unified and integrated system of transportation throughout the United States.

V

The Brotherhood of Locomotive Firemen and Enginemen is, and at all times herein mentioned has been, a lawful labor
30 organization, existing for the purpose in whole or in part of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, and other conditions of employment.

VI

The respondent by its officers and agents, while engaged in its operations as described above, did, at San Francisco, California, on or about the 13th day of March 1936 discharge V. R. Sager, a driver employed by respondent on Division 4 of its lines, and did, at Los Angeles, California, on or about the 6th day of May 1936, discharge H. A. Camy, a driver employed by respondent on Division 3 of its lines, and has at all times since said date refused to re-employ said V. R. Sager and H. A. Camy, and each of them.

VII

The respondent discharged and refuses to re-employ said V. R. Sager and H. A. Camy, and each of them, for the reason that said V. R. Sager and H. A. Camy, and each of them, joined and assisted a labor organization known as Brotherhood of Locomotive Firemen and Enginemen, and engaged in concerted activities with other employees in said Divisions 3 and 4, and elsewhere, for the purpose of collective bargaining and other mutual aid and protection.

VIII

The respondent, by its officers, agents, and employees, while engaged in its operations as described above, has, at numerous times since July 5, 1935, down to the date of the issuance of this complaint, urged, persuaded, and warned its employees at San Francisco, California, Los Angeles, California, and elsewhere on its said lines,
31 to refrain from becoming or remaining members of said Brotherhood of Locomotive Firemen and Enginemen, and has threatened its said employees with discharge if they become or remained members thereof.

IX

The respondent, by its officers, agents, and employees, while engaged in its operations as described above, has from July 5, 1935, down to the date of the issuance of this complaint, by sundry and

divers acts of intimidation and coercion, interfered with, restrained, and coerced its said employees at San Francisco, California, Los Angeles, California, and elsewhere on its said lines, from joining or assisting said Brotherhood of Locomotive Firemen and Enginemen, a labor organization of their own choice, and from engaging in concerted activities for the purpose of collective bargaining and other mutual aid and protection.

IX

Prior to July 5, 1935, respondent initiated and formed, and at all times since said date has dominated, interfered with, and contributed support to a labor organization of its operating employees known as "Pacific Greyhound Drivers' Association."

XI

By the discharge of and its refusal to reemploy said V. R. Sager and H. A. Camy, and each of them, as above set forth, and by urging, persuading, and warning its employees against becoming and remaining members of said Brotherhood of Locomotive Firemen and Enginemen, as above set forth, and by threatening said employees with discharge if they became or remained members thereof, as above set forth, and by interfering with, restraining, and coercing its
32 employees, as above set forth, and by forming and initiating, dominating, interfering with, and contributing support to said Pacific Greyhound Drivers' Association as above set forth, and by all of said acts, and each of them, the respondent did interfere with, restrain, and coerce its employees in the exercise of the rights guaranteed in Section 7 of the National Labor Relations Act, and by all of said acts and each of them, has thereby engaged in and is thereby engaging in unfair labor practices within the meaning of Section 8, Subdivision (1) of said Act.

XII

By its discharge of and its refusal to reemploy said V. R. Sager and H. A. Camy, and each of them, as above set forth, the respondent did discriminate and is discriminating in regard to hire and tenure of employment of the said V. R. Sager and H. A. Camy, and each of them, and did thus discourage, and is thus discouraging, membership in the Brotherhood of Locomotive Firemen and Enginemen, did thereby engage in, and is thereby engaging in, unfair labor practices within the meaning of Section 8, Subdivision (3) of said Act.

XIII

By forming and initiating, and by dominating, interfering with and contributing support to said Pacific Greyhound Drivers' Association, as above set forth, the respondent did thereby engage in, and is thereby engaging in unfair labor practices within the meaning of Section 8, Subdivision (2) of said Act.

XIV

The aforesaid unfair labor practices occur in the course and current of commerce among the several states, and, on the basis of experience in respondent's lines and affiliated lines, and in the same and other industries, have led and tend to lead to labor disputes and other forms of industrial unrest which burden and obstruct commerce among the several states and the free flow thereof, and which in the field of transportation have the effect of impairing the safety and efficiency of the instrumentalities of transportation among the several states.

33

XV

The aforesaid acts of respondent, set forth in paragraphs VI, VII, VIII, IX, X, XI, XII, XIII, and XIV hereof, constitute unfair labor practices affecting commerce within the meaning of Section 8, Sections (1), (2), and (3) and Section 2, subsections (6) and (7) of the National Labor Relations Act.

Wherefore, the National Labor Relations Board, on the 8th day of July, 1936, issues its second amended and consolidated complaint against the Pacific Greyhound Lines, Inc., respondent herein.

34 *Notice of hearing*

Please take notice, that on the 23rd day of July 1936, at 10:00 o'clock in the forenoon, at Room 388, City Hall, Civic Center, San Francisco, California, a hearing will be conducted before the National Labor Relations Board, by its agent, Charles A. Wood, designated by it in accordance with its Rules and Regulations, Series 1, as amended, on the allegations set forth in the second amended and consolidated complaint attached hereto, at which time and place you will have the right to appear in person or otherwise, and give testimony.

You are further notified that you have the right to file with the Regional Director for the Twentieth (20th) Region, acting in this matter, as the agent of the National Labor Relations Board, an answer to the second amended and consolidated complaint attached hereto, on or before the 15th day of July 1936.

Enclosed herewith for your information is a copy of Rules and Regulations, Series 1, as amended, made and published by the National Labor Relations Board, pursuant to authority granted in the National Labor Relations Act. Your attention is particularly directed to Article II of said Rules and Regulations.

In witness whereof, the National Labor Relations Board has caused this, its second amended and consolidated complaint and Notice of Hearing to be signed by the Regional Director for the Twentieth (20th) Region on the 8th day of July 1936.

ALBERT M. ROSENBLATT,
Regional Director for the Twentieth (20th) Region.

35 Before the National Labor Relations Board, Twentieth Region

Case No. XX–C–14 and Case No. XXI–C–75

[Title omitted.]

Answer of Pacific Greyhound Lines, Inc.

Comes now Pacific Greyhound Lines, Inc., a California corporation, respondent herein, and for its answer to the Second Amended and Consolidated Complaint in the above entitled proceeding, alleges:

1. As to the matters set forth in said Second Amended and Consolidated Complaint preceding Paragraph I thereof, said respondent is without information as to the allegations thereof, and, therefore, denies the same.

2. The respondent admits the allegations of Paragraph I thereof.

3. The respondent is a common carrier for hire by motor vehicle in transporting passengers, baggage, mail, and express upon the public highways for the general public in the States of Oregon, California, Nevada, Utah, Arizona, New Mexico, and Texas, and has certain contracts with railway and express companies in its business as a common carrier.

4. The respondent operates in connection with the motor bus transportation system known as the Greyhound Lines, and is affiliated with the several Greyhound Companies through stock ownership by the Greyhound Corporation, a Delaware corporation, of the stock of Pacific Greyhound Corporation, a Delaware corporation, which owns the stock of respondent; that the various Greyhound Companies, as connecting carriers, operate a system of motor bus transportation throughout various parts of the United States.

5. The respondent has no information as to the allegations of Paragraph V of the Second Amended and Consolidated Complaint and, therefore, denies the same.

36 6. That prior to, on, or about the 13th day of March, 1936, V. R. Sager, a driver, was employed by respondent on Division No. 4 of its lines, and that prior to, on, or about the 6th day of May, 1936, H. A. Camy, a driver, was employed by respondent on Division No. 3 of its lines, and that said V. R. Sager and H. A. Camy were discharged on said dates, respectively, for cause.

7. The respondent specifically denies the allegations of Paragraph VII of the Second Amended and Consolidated Complaint.

8. The respondent specifically denies the allegations of Paragraph VIII of the Second Amended and Consolidated Complaint.

9. The respondent specifically denies the allegations of Paragraph IX of the Second Amended and Consolidated Complaint.

10. The respondent specifically denies the allegations of Paragraph X of the Second Amended and Consolidated Complaint.

11. The respondent specifically denies the allegations of Paragraph XI of the Second Amended and Consolidated Complaint.

12. The respondent specifically denies the allegations of Paragraph XII of the Second Amended and Consolidated Complaint.

13. The respondent specifically denies the allegations of Paragraph XIII of the Second Amended and Consolidated Complaint.

14. The respondent specifically denies the allegations of Paragraph XIV of the Second Amended and Conso' dated Complaint.

15. The respondent specifically denies the allegations of Paragraph XV of the Second Amended and Consolidated Complaint.

16. Except as to the matters herein specifically alleged and admitted, respondent denies each and every allegation of the Second Amended and Consolidated Complaint.

PACIFIC GREYHOUND LINES, INC.,
By H. C. LUCAS,
Attorney for Respondent,
221 Pine Street, San Francisco, Calif.
IVAN BOWEN,
Attorney for Respondent,
1650 Rand Tower, Minneapolis, Minn.

38 C. W. Moffitt, called as a witness by the National Labor Relations Board, being first duly sworn, testified as follows:

39 Before the National Labor Relations Board

Cases Nos. XX-C-14, XXI-C-75

IN THE MATTER OF PACIFIC GREYHOUND LINES, INC. AND BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN

Intermediate report

On charges duly made, and acting pursuant to authority granted in Section 10 (b) of the National Labor Relations Act, approved July 5, 1935, Alice M. Rosseter, agent of the National Labor Relations Board, designated by National Labor Relations Board Rules and Regulations—Series 1, as amended, Article IV, Section 1, issued the complaint herein, designated a Second Amended and Consolidated Complaint, dated June 25, 1936, with notice of hearing to Pacific Greyhound Lines, Inc., the respondent herein. The said complaint and notice of hearing were duly served upon the respondent on June 26, 1936, in accordance with said Rules and Regulations—Series 1, as amended, Article V, Section 1.

The complaint alleges in substance:

1. Respondent, by its officers and agents, on or about March 13, 1936, terminated the employment, and refused to reemploy, V. R. Sager and, on or about May 6, 1936, terminated the employment, and refused to reemploy, H. A. Camy, each of whom had been engaged as drivers by respondent at San Francisco and at Los Angeles, respectively, for the reason that they joined and assisted a labor organization known as the Brotherhood of Locomotive Firemen

40 and Enginemen and engaged in concerted activities with other employees for the purpose of collective bargaining and other mutual aid and protection.

2. Respondent, prior to July 5, 1935, initiated and formed a labor organization of its operating employees known as "Pacific Greyhound Drivers' Association," and at all times since July 5, 1935, has dominated, interfered with and contributed support to the said Association.

3. Respondent, by its officers and agents, at numerous times since July 5, 1935, has urged, persuaded and warned its employees at San Francisco, Los Angeles, and elsewhere on its lines to refrain from becoming or remaining members of the Brotherhood of Locomotive Firemen and Enginemen, has threatened its employees with discharge if they became or remained members thereof, and by divers acts of intimidation and coercion, has interfered with, restrained and coerced its employees at San Francisco, Los Angeles, and elsewhere on its lines, from joining or assisting the said Brotherhood, and from engaging in concerted activities for the purpose of collective bargaining and other mutual aid and protection.

Respondent's answer alleges in substance as follows:

Respondent admits its corporate organization and that it is engaged as a common carrier in transporting passengers, baggage, mail and express on the public highways in several named states; that respondent operates in connection with the motor bus transportation system known as the Greyhound Lines, is affiliated with the several Greyhound Companies through stock ownership by the Greyhound Corporation, a Delaware corporation, of the stock of Pacific Greyhound Corporation, a Delaware corporation, which owns the stock of respondent; and that the various Greyhound Companies, as connecting carriers, operate a system of motor bus transportation throughout various parts of the United States. Respondent avers that about March 13, 1936, and May 6, 1936, it discharged V. R. Sager and H. A. Camy, respectively, for cause. Except as to the matters in subetance here set out, the answer denies each and every allegation of the complaint.

41 Pursuant to notice of hearing, the undersigned, as agent of the National Labor Relations Board, designated by the Board's Rules and Regulations-Series 1, as amended, Article IV, Section 2, and Article II, Section 22, conducted a hearing commencing on July 23, 1936, at San Francisco. Respondent appeared by its counsel, Ivan Bowen and H. C. Lucas. The Board was represented by David C. Shaw, one of its attorneys.

At the opening of the hearing respondent moved to dismiss the complaint on constitutional grounds. This motion was denied. Respondent thereupon moved to dismiss the complaint on the ground that it did not state facts constituting a complaint under the National Labor Relations Act. This motion was likewise denied. Respondent then filed its answer. At the close of the testimony of the second witness called by the Board, C. W. Moffitt, respondent again

moved to dismiss the complaint on the ground that the Brotherhood of Locomotive Firemen and Enginemen (hereinafter referred to as the Brotherhood) is "not a labor organization cognizable under this act defined as a labor organization or having relation to an employer under the National Labor Relations Act. In other words, I think that it is by exclusion, rather than by inclusion in the Railroad Act." The motion to dismiss on these grounds was also denied. At the close of the Board's case, respondent made three separate motions to dismiss: the first motion on the ground stated in its special appearance, i. e., constitutional and other grounds; the second motion on the ground that the complaint was "not based on a charge of the National Labor Relations Act" in that the Brotherhood was not a labor organization within the meaning of the Act, and, further that under the Act the employee must file the charge ("the man himself") and not the union; and the third motion on the ground that there was no proof to sustain the complaint. All three motions were denied. At the close of the hearing, respondent again moved to dismiss the complaint on the ground that there was no proof that respondent has committed any acts in violation of the National Labor Rela-
42 tions Act. The motion was denied. Respondent at this time further moved to strike all testimony "relating to the time prior to July 5, 1935, upon the ground that it is incompetent, irrelevant, and immaterial." The motion on this ground was likewise denied. At the close of the Board's case, the Board's attorney moved to conform the pleadings to the proof, which motion was taken under advisement, and is herein and now granted. Doubts having arisen as to the accuracy of the transcription of the testimony contained in the record between page 206 and page 296, the Trial Examiner, at the close of the hearing, called for written statements from counsel setting forth any inaccuracies or omissions in that part of the record, such statements to be made a part of the record in the event that no stipulation, in reference thereto, were entered into by counsel. Pursuant to the Trial Examiner's request the Board's counsel subsequently called attention to certain inaccuracies on page 250 and page 251 of the record. Since the corrections thus indicated confirm the Trial Examiner's recollection of that testimony, and since nothing to the contrary has been submitted by counsel for the respondent, the correction is accepted as proper and true. No statement pursuant to the permission granted having been filed by counsel for respondent, and the timeliness of such a statement being long past, the Trial Examiner believes that respondent should be foreclosed from any later objection in this regard. The Trial Examiner further wishes to call attention to the fact that on page 331 of the record the witness Casey is referred to as Kearney, an error which apparently arose because of the similarity of pronunciation of the two names.

Full opportunity to be heard, to examine and cross-examine witnesses and to produce evidence bearing upon the issues was afforded to all parties. Counsel for the parties, at the close of the hearing, did not request the opportunity for oral argument, and no request

was made to file briefs pursuant to the Board's Rules and Regulations—Series 1, as amended, Article II, Section 29.

Upon the record thus made, the stenographic report of the
43 hearing and all the evidence, including oral testimony, documentary and other evidence offered and received at the hearing, and consideration of statutes of which the Trial Examiner was requested to take judicial notice, the undersigned makes, in addition to the above, the following specific findings of fact:

1. A statement made by W. E. Travis, president of respondent on March 5, 1935, that "Pacific Greyhound Lines, Inc., has been engaged in the common carriage of passengers, baggage, and express over the public highways in seven of the western states (Oregon, California, Nevada, Utah, Arizona, New Mexico, and Texas) continuously since June 15, 1930. Its operations extend over 7,800 miles of highway; it operates more than 53,000 schedule miles daily, employs some 430 drivers, and transports annually approximately 4,000,000 of passengers," is substantially true. Board Exhibit 2, a photostatic copy of certain pages from Moody's Manual of Investments, discloses that respondent is controlled by Pacific Greyhound Corporation, a Delaware corporation, and the common stock of Pacific Greyhound Corporation is owned by Greyhound Corporation, Southern Pacific Company, and others. Respondent made application to the Interstate Commerce Commission on January 15, 1936, on behalf of Pacific Greyhound Lines, Inc., et al., for a certificate to operate as common carrier of passengers under the Motor Carrier Act, 1935, and set forth therein that respondent is closely affiliated with some thirteen Greyhound Systems; and that "Said affiliation is effectuated through ownership, directly or indirectly, of voting capital stock by The Greyhound Corporation, a corporation of the State of Delaware, and the rights and powers arising by virtue thereof are used to promote the operation of the motor carrier companies composing said Greyhound Lines as distinct, independent enterprises coordinated with one another into an integrated system of national transportation; and that the business, traffic, interests, and affairs of said Greyhound Lines are mutual and common in that they jointly
44 solicit, sell, and provide transportation, for the continuous carriage of passengers, mail, express, and newspapers, and function and operate through joint traffic, operating and facility arrangements as a system constituted of the lines of said motor carriers" (Board Exhibit 3). Board Exhibit 7, the annual report of respondent to the Railroad Commission of the State of California for the year ending December 31, 1935, discloses that during that year respondent paid to The Greyhound Corporation, Chicago, Illinois, $7,200 as a general management fee; it was further reported to the Railroad Commission that The Greyhound Corporation is a part owner of Pacific Greyhound Corporation, which owns 100 per cent of the outstanding capital stock of Pacific Greyhound Lines, Inc. The record further reveals that respondent is regulated under the Public Utilities Act of the State of California and, as noted above, by the Railroad Commission of the State of

California. In California respondent operates its routes under "certificates of convenience and necessity" issued under state laws. Respondent publishes a time table, roughly similar in form to that published by a railroad company, showing schedules providing for interstate transportation over respondent's lines (Board Exhibit 5). Respondent's schedules are designed to meet the needs of interstate shipments. Board Exhibit 4, the report of public accountants to the Board of Directors of The Greyhound Corporation dated February 29, 1936, contains a map under the legend Greyhound Lines, "affiliated with The Greyhound Corporation," indicating that respondent is one of a number of so-called Greyhound Lines and that the system as a whole is transcontinental in extent, and practically nation-wide. Witnesses for the Board testified that on their own local runs, as drivers of respondent's busses, two to five of their passengers on each run hold tickets providing for interstate transportation, clearly identified as such by the nature of the ticket coupons issued.

2. The Brotherhood of Locomotive Firemen and Enginemen was organized December 1, 1873. The constitution of the organization reveals that its purpose is to promote the interest, economic and otherwise, of its members. The organization has some 70,000 members. It is not affiliated with the American Federation of Labor, but it is, however, one of the so-called Big Four of the Railroad Brotherhoods. Originally the organization did not admit bus drivers to membership but a resolution adopted in the fall of 1933 authorized such admissions. Prior to that time a number of respondent's drivers had called several times upon the local chairman of Lodge 58 of the Brotherhood, requesting admission. Subsequent to the adoption of the resolution referred to, bus drivers were absorbed into existing lodges of the Brotherhood. During the fall of 1933 some 264 among respondent's 430 drivers made application to join that organization.

3. The Brotherhood of Locomotive Firemen and Enginemen is a labor organization within the meaning of the Act.

4. The company countered the organization attempts of its employees by forming a company union, now called "Pacific Greyhound Drivers' Association." The record contains abundant evidence of initiation, sponsorship and domination of the company union by the company during and subsequent to the fall of 1933. The constitution and by-laws and working agreement, apparently drawn up concurrently about October 1, 1933, were drafted under the guidance and W. E. Travis, president of the company. ". . . . there was none of us," testified a driver who had acted apparently as one of the drafting committee, "capable of drawing up a working agreement, or a constitution and by-laws." Jones, general manager, admitted that respondent's general counsel might have helped draft the words in the present company union agreement which give respondent a veto power, i. e., "No change shall be made except by mutual consent of the parties concerned." No outside person or organiza-

tion, according to the plain intent of the constitution and by-laws of the company union, may represent the employees; not only must each representative be a member of the company union but also in addition he must have had at least one year's active service as a driver with respondent (Board Exhibit 23; Article IV, Section 1; Article VI, Section 2). Seven so-called representatives of the men, who shortly before had been elected representatives in a manner which, so far as the record is concerned, leaves doubt as to their truly representative character, held a meeting in San Francisco to consider the matter of the constitution and by-laws and working agreement, and there were frankly told by respondent's officials that a company union was better for them than an outside organization.

Jones, the general manager, testified that participation by respondent in the company union is the same today as it was in 1934. Thus it is clearly implied that respondent's officials in attempts to influence the actions of members of the company union as well as others among its employees make speeches and circulate bulletins whenever deemed advisable. Such interference was in effect affirmed by Martin, a representative of the company union on respondent's Division 4, who testified that the company union now operates, runs and has the same policies as in the beginning.

The company makes available to the company union, whenever it desires, space for meeting, secretarial help and apparently envelopes and stationery. Miller, a dispatcher, and at times Dudgen, an auditor, each of whom by their positions representing the management rather than the men, take notes of the company union meetings. A check-off system for deduction of company union dues is in effect. It was admitted by respondent's officials that members of the company union are not entitled to be represented by an "outsider"; and that if the company and the men cannot agree on a certain matter the status quo stands. A company union representative called as a witness for the respondent testified that he solicited for the company union on or off duty, and was never informed by the company that solicitation on company time was not permitted.

The dominance by the company of the company union is further evident in uncontradicted testimony to the effect that Hodge, a superintendent on one of respondent's divisions, informed a group of company union members called to discuss a certain plan proposed by respondent that "if Mr. Travis (president of the company) wanted it to go that way, it would go that way, regardless of all the voting the drivers did at the meeting there"; and apparently as a result of this statement no vote was taken on the plan (which is here unnecessary to set out) and the plan was adopted and is now in effect.

The members of the company union meet only with the representative of their division. Such meetings do not appear to take place frequently. Thus one company witness testified that there had not been a company union meeting for one year on his division

and another such witness testified that there had been no meeting for several months. On the other hand the representatives do meet with each other and with the management from time to time, on the call of the individual representative or on the call of the chairman of the Board of Representatives.

5. The Trial Examiner finds that respondent, prior to July 5, 1935, initiated and formed, and, at all times since that date, has dominated and interfered with and contributed support to a labor organization of its employees known as "Pacific Greyhound Drivers' Association."

6. After the formation of the company union in the fall of 1933, the president of the company and other officials addressed respondent's drivers from time to time, making no secret of their hostility to the Brotherhood and of their opposition to membership on the part of the drivers. Early in 1934 the Brotherhood requested the National Labor Board to hold an election in order to ascertain whether the men desired to be represented by the Brotherhood or by the company union. A determined and successful attempt was made by respondent to defeat the Brotherhood at this election. On April 19, 1934, there was a meeting of the company union at San Francisco, which all men not on duty were instructed to attend, addressed
48 by Travis, president of the company. His lengthy speech was later mimeographed and sent to minor officials of the company with instructions to bring it to the attention of the employees who had not actually heard the speech delivered; and a covering letter instructed the recipients of the mimeographed speech not to let it out of their hands. This speech is one of the most brazen examples of interference with self-organization of employees that has ever come to the attention of the Trial Examiner.

Likewise prior to the election held by the National Labor Board efforts were made by the company to obtain from its employees powers of attorney revoking prior designation of the Brotherhood as their representative. Subsequently, at the election held, a substantial majority of the employees voted in favor of the company union. This company union victory had as one of its results that many of the employees who had been most active in attempts to organize on behalf of the Brotherhood, dropped out of that organization; and the Brotherhood became inactive so far as respondent's drivers were concerned. It continued to remain inactive until after the enactment of the National Labor Relations Act.

7. During the fall of 1934, as revealed in an exhibit in evidence—a decision of the National Labor Board, being Case No. 393D dated April 11, 1935, two employees of the company, one Perryman and one Beeman, attempted to organize an independent union called the Brotherhood of Motor Coach Operators. The activity of these two employees in attempting to set up an independent labor organization resulted in their discharge because of union affiliation and activities, according to the finding made in that decision. The Trial Examiner has accepted this finding as a fact, not only because it was the decision

and finding of an impartial government body, but because the conclusion reached is liberally supported by evidence of hostility to union organization contained in the present record.

49 8. The foregoing recitals, so far as they concern events prior to July 5, 1935, are set forth, despite the fact that the National Labor Relations Act applies only to practices occurring on or after July 5, 1935, because many of respondent's present practices have their origin in events prior to July 5, 1935, and a knowledge of that background of events is, in the opinion of the Trial Examiner, essential to a proper evaluation of the present practices.

9. After the passage of the National Labor Relations Act certain employees again became active on behalf of the Brotherhood. Shortly thereafter Jones, the general manager, addressed a group of employess at Los Angeles and told them "officially" that they were free to join any organization they desired to join, but "unofficially" that the president of the company was opposed to organized labor, that he had never dealt with it, that he would resign from the presidency rather than sign a contract with it, and that the men would never obtain any benefits by joining any labor organization. At the same time Jones further warned the men present that they would have company spotters to contend with (apparently meaning company spies). The attitude of respondent was later reaffirmed in a letter addressed by Jones to one of the drivers in which it was stated: "it is very apparent that some narrow minded drivers are assuming that I am in favor of their joining the Brotherhood. Needless to say, you well know my feelings toward the Brotherhood, *or any other organizations*, so far as our men joining it is concerned. . . ." [Italics supplied.]

Shortly after the enactment of the National Labor Relations Act the respondent published a printed bulletin advising its employees of what the Act meant, which bulletin bore a subcaption "Don't be mislead by false statements" and the further statement that "Agitators are supplying misleading answers. . . ." In this bulletin respondent limited its explanation of the meaning of the Act to pointing out that the Act does not cover all industry; that the Act
50 does not require membership in a union; that an employer is not required to agree to collective bargaining demands; that men cannot be discriminated against for refusing to join a union; that the Act does not advocate a closed shop; that the Act does not permit the government to dictate working conditions; that the Act does not interfere with the company's right to discharge for cause; and that company unions are permitted. If there were any doubt as to the purpose of respondent in calling to the attention of its employees the half-truths contained in this bulletin, the record as a whole leaves no doubt whatever, since this document is merely one link in a chain of propaganda emitted by respondent in its continuing campaign of interference.

Jones, the general manager, called to the witness stand by respondent, confessed that he had talked with the employees about labor

organizations and that he had advised them not to join the Brotherhood because "I didn't believe it was within the interests of themselves or the company, inasmuch as the railroad organizations have always been against the encroachments, as they call it, of busses and trucks on the highway; and have religiously fought it, and we did not feel, and it has not been the policy of the officials—and our officials have been so told—that it would not be well to have an organization that was directly competitive with us, representing our men." This is truly a remarkable statement in that it reveals that the officials of the respondent apparently have come to no independent conclusion as to the advisability of the Brotherhood representing the drivers, but have been informed by unnamed persons, that it would not be advisable.

The main reason for hostility to the Brotherhood, as stated by this same witness, is that the Brotherhood has opposed applications to operate made by the bus industry. In the opinion of the Trial Examiner the excuse offered to justify respondent's campaign of interference loses whatever merit it might have had by reason
51 of the fact that respondent is not merely hostile to a certain labor organization but is hostile to any labor organization. The distinction is not without significance.

Hodge, respondent's superintendent on Division 3, stated that he believed the labor policy and attitude of the company today are precisely what they were during 1934.

10. The Trial Examiner finds that respondent has interfered with, restrained, and coerced its employees in the exercise of their rights to self-organization, to form or join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection. Such conclusion is further supported by findings of fact which follow.

11. V. R. Sager was discharged on March 12, 1936, for reasons variously described as full responsibility for accident, full responsibility for accident and speeding, and multiplicity of accidents. The accident first referred to occurred on March 7, 1936, and was a so-called rear-end collision, resulting in no personal injuries but a damage claim for which a release was taken in the amount of $55. Rear-end collisions according to witnesses for respondent are of grave importance and constitute a cardinal sin since not only do they indicate negligence on the part of the driver but often lead to large claims. It is not necessary, however, to go into the circumstances surrounding this particular accident except to call attention to the fact that there was a conflict of opinion among eye witnesses as to whether or not Sager, the driver, was to blame; the claim was settled by the company before investigation was completed; and there is a conflict between the statements made by the driver and the claimant as to the cause of the accident, which conflict was resolved in favor of the claimant without interrogation of Sager beyond that contained in a form report made by him and a brief statement attached

to that form report. Sager's superior, the superintendent of Division 4, made up his mind as to Sager's responsibility for the
52 accident upon reading in Sager's official report the two facts (1) that the driver's attention was first called to danger of accident when 75 feet away, and (2) that at that time the speed of the bus was 40 miles per hour; apparently the superintendent of Division 4 gave little or no credence to the fact, stated on the report, that the car of the claimant, about to make a left turn, had crossed at an angle of 45 degrees from the outside lane to the third lane of the six lane highway, across the path of the bus which was in the second lane, and stopped. Respondent's official in charge of claims apparently made up his mind as to responsibility upon investigation by flashlight that night at the scene of accident. Although the superintendent of Division 4 does not ordinarily discuss with the president of the company whether a man should be discharged because of a particular accident, the superintendent in this case went to the president; and at the hearing the superintendent testified that his reason for so doing was that he knew the president had had numerous conferences with Sager in reference to the Brotherhood; thereafter the witness admitted that he knew that the president was opposed to the Brotherhood. Customarily the official in charge of claims, who investigated at the scene of accident, merely makes a factual report, but in this instance his advice was asked by the president of the company as to the responsibility of Sager. The implication that the company was waiting for an excuse to discharge Sager is buttressed by other facts set out below.

While it was implied by company witnesses that rear-end collisions inevitably lead to discharge, it was nevertheless disclosed by company witnesses that out of some 21 rear-end collisions since 1930 thirteen men only had been discharged on that account, while eight had not been so discharged. Sager's "History," Board Exhibit 46, reveals that Sager himself had had a rear-end collision on April 25, 1931, and had not even been disciplined.

The company witness in charge of the investigation of the
53 accident, Hensley, was evasive as to whether this particular accident of Sager's was a dischargeable offense and finally admitted that it depended upon the man's record. When brought forward, Sager's record, or "History," showed 28 different notations of accidents and infractions of the rules. No such report was available at the time Sager was discharged, although the data used subsequently in its preparation was in the company files. The record was especially prepared three weeks before the Board's hearing. Although it discloses various infractions of rules by Sager during the course of his employment, these infractions, according to the reasons stated by respondent at the time of discharge, had nothing whatever to do with his dismissal and will not again be referred to.

Sager's accident record, included on the report above referred to, shows that during approximately eight years, 1929 to 1936, he had had 17 accidents. The accident notations made on Sager's record

disclose two accidents in 1929, six in 1930, two in 1931, two in 1932, one in 1933, three in 1934, and no accident in 1935 and 1936 until the time of his discharge. Of the 17 he had had two only which resulted in discipline, the first in 1932 and the second in 1934, the latter resulting in mild discipline only. It is important to note that it is the practice of the company to be severe, as regards disciplining the driver, whenever negligence is involved, thus leaving the plain implication that Sager was guilty of no negligence in the opinion of the company as regards any accident except the two noted. Evidence that the company considered this accident record good, at least relatively, lies in the fact that Sager during the course of his employment received several commendatory letters. Thus Board Exhibit 31–B, dated July 15, 1933, is a noteworthy panegyric, set off by a prominent gold seal and signed by the general manager of the company and two other officials, stating, in part, ". . . this token of recognition for your splendid service as a driver *since December 1, 1928* . . . Your one year accident record is a noteworthy ac-
54 complishment . . ." [Italics supplied.] Board Exhibit 31–E discloses that as late as December 19, 1935, Sager was still characterized by Travis, president of the company, as a "loyal, efficient and safe driver." Further evidence that Sager's accident record was deemed good by the company lies in the fact that the average accident frequency per one hundred thousand miles for 1921 to 1936 was estimated by a company witness to be 8.1, and it was admitted that based upon such an estimate Sager would have a good record, and if he were only deemed responsible for accidents for which he had been disciplined that Sager's accident record would be lower than 1.9, i. e. considerably lower than the average. The weight to be given this admission is considerably strengthened by the total absence of comparative accident reports, or indeed any evidence which would permit of a basis of comparison between Sager and other drivers. Respondent's superintendent, who testified as to the number of rear-end collisions that have resulted in discharge of the drivers involved, had no efficiency or other reports to offer which, considered with the case of Sager, would have permitted comparison.

Sager was first employed in 1928 by companies later absorbed by respondent. From November 17, 1929 to March 12, 1936, he was actually employed as a driver by respondent. Sager joined the Brotherhood in the fall of 1933 and soon thereafter became quite active in attempting to organize the men in behalf of that organization. Apparently, Sager was deemed by respondent to have qualities of leadership since efforts were made by respondent's officials to get him to enlist his support in favor of the company union, which, as previously noted, was formed practically simultaneously with the beginning of activity on behalf of the Brotherhood. These efforts were not, however, successful. It is significant that at this time Sager was warned by his superintendent to "keep his nose clean" which was apparently meant as a warning of discharge should he persist in his activities in behalf of the Brotherhood. In the fall of 1935 he was

again warned by one of respondent's superintendents, Woods, and informed that he was "walking on this ice and I would have to
55 walk a straight line because he had been instructed to turn me in for any violation of the rules or regulations of any kind." It will be noted that these warnings strengthen the implication already noted that the superintendent of Division 4 went to the president of the company at the time of Sager's accident to report an excuse for discharging Sager.

12. In August 1935, Sager was informed by the general manager that he, Jones, knew that Brotherhood activity had again started and that Sager was taking an active part in it. In September, Sager was informed by the superintendent of Division 4 that Travis, president of the company, had not yet asked him who were the "key" organizers among the men; thus implying that the superintendent had knowledge of that fact. Jones, general manager, admitted on the witness stand that the company had known for a long time that Sager was very active in Brotherhood work; and Jones admitted that Sager had led the fight "in the north." Another company witness testified that Sager's union activity was a matter of common knowledge. There is further evidence in the testimony of Jones that the company kept itself fully informed as to union activity; thus Jones quoted Travis as asking "Is so-and-so organizing?" To which Jones would reply, "Yes; I understand he is." Jones assumed from Travis' questions that Travis was getting information "as to what was going on within his organization."

13. Apart from findings already made herein, which are self-revealing as to respondent's motive, there are a number of other significant facts, among which are the following:

The superintendent of Division 4, according to union witnesses, is said to have stated upon learning that a certain man was a member of the Brotherhood that "it is damnably disloyal," and insisted that the man withdraw from that organization. The superintendent upon the witness stand did not contradict this testimony. Thompson, a driver who was discharged in April 1936, was informed by Fancher, an agent of respondent, that Thompson's discharge
56 had nothing to do with his work but resulted from his membership in the Brotherhood; and Fancher, according to Thompson, declared that he was "out to get all the dope" on members of the Brotherhood. In March 1936, Woods, another minor official of respondent, warned Lyons, a driver active in Brotherhood activities, that he, Woods, had orders to report him for any breach of discipline whatever. Lyons has not been discharged by the company and appeared at the hearing under subpoena. His testimony is of significance not only because the incident which he described took place shortly after Sager's discharge, but also because it again indicates that respondent was seeking cause as an excuse for dismissal.

The question arises, in respect to Sager's case, why, if respondent wished to discriminate against Sager by discharge, he was not dis-

charged earlier. The Trial Examiner would have found the fact that Sager's renewed activity began in the summer of 1935, and yet he was not discharged until nine months later, very persuasive in absolving the company from any improper motivation but for testimony that the Brotherhood's strength among the drivers did not become impressive until about February 1936, and, but for testimony that when organization started in the summer or fall of 1935, Jones, by his own admission, did not consider it very much of a challenge since he believed it would not get very far, and that he had not again heard of the Brotherhood activity until long after Christmas, 1935.

14. H. H. Camy was discharged on May 6, 1936, for "failure to properly perform driving duties." His superintendent specifically informed him that the reason for his discharge was the loss of two pieces of express within a relatively short period of time. At the hearing, the same superintendent, testified however that the main reason for discharge was Camy's "insubordination and insolence," and that this was manifested solely by the reply of Camy to the superintendent's statement that he would have to lay him off. The insubordinate and insolent remark was, "You're the boss, go ahead and fire me." The superintendent admitted that Camy would
57 not have been discharged except for this statement; and further stated "that is all that happened." The manner of Camy when making the remark characterized as insubordination was not objectionable, the superintendent admitted, and it was said quietly. The superintendent further admitted that Camy was a "peaceful chap" and had never been insolent before. Two days intervened between the time of the remark and the decision of the superintendent to discharge Camy. Camy was discharged because of this statement despite the fact that he had worked with that particular superintendent for eleven years.

Two months before his discharge Camy had lost an express package. The matter had been brought to his attention and in lieu of any disciplining or deductions from pay, he had paid the full amount of the loss, some ten dollars. A few days prior to his discharge, he was accused of having lost a "Valuable Package Label" envelope. Camy appears to have had no record of the loss of that envelope but accepted the company's word that that envelope had been picked up on his route and that any such loss occurring on his route must have been occasioned by him. The envelope was later found, apparently intact. The label, which with the envelope was put in evidence, discloses that such labels "must be manifested on driver's record of waybills and handled and receipt secured for in same manner as express." This statement would indicate that a record is kept by the company of all such envelopes and that waybills showing the receipt of this particular "V. P. L." by Camy could have been produced by the company; no such evidence, however, was introduced.

Camy had been employed, according to the certificate of service given him upon his discharge, from September 1925, to May 6, 1936;

and his services generally had been "satisfactory." Camy stated it to be his belief that until March 1936, when he first lost the package, he had a perfect record with the company. Respondent did not contradict this statement. The general manager testified that Camy as a driver was "all right," and admitted that he had never heard
58 anything against Camy "until this came up." Camy was discharged despite the fact that to break in a new driver costs respondent approximately $1,500; and despite the fact that a driver having no accidents "puts dollars and cents into the pockets of the company." On March 25, 1936, shortly before Camy's discharge, one of respondent's officials wrote to him ". . . with great pleasure I am able to inform you that on December 15, 1935, you completed one year's nonaccident record." In the fall of 1933 Camy had joined the Brotherhood. Thereafter he resigned, but again joined the Brotherhood in the fall of 1935, and until his discharge in May was active in organizing his fellow workers. In this union activity Camy was described as the right-hand man of another driver active in organizing, the "key man" Warren Macy.

15. The record leaves no room for doubt that the company had knowledge of the so-called key men who were organizing on behalf of the Brotherhood. Nor does there seem room for much doubt that Camy was one of these key men. That Sager was, is admitted. The result of the discharge of Sager and Camy, was that organization activity stopped until such time as the National Labor Relations Board should determine the facts as concerns the reason for their discharges. It was explained that there was no use to continue such activity until the cases of Sager and Camy had been disposed of.

16. The Trial Examiner finds nothing inconsistent in the fact that other key men were not discharged, since the result of the discharge of these two men was, from respondent's standpoint, just as effective as though all the key men had been let go. The record contains evidence of hostile motive and knowledge of union activity sufficient to weigh any doubts as to the reasons for discharge in favor of those urged by the men and the Brotherhood as representative of the men. It is a reasonable inference from the record that other men active in union organization on behalf of the Brotherhood would have been discharged had an excuse offered. Thus Lyons in effect had been
59 so informed. Macy, another key man not discharged, apparently has a fine record, affording little excuse for termination of his services. Further support for a conclusion that Camy and Sager were discharged because of union activity is the statement of the general manager that instructions had been issued to all officials of the company that in case of doubt as to whether or not a man should be discharged, the doubt should be resolved in favor of the employee. Certainly there were such doubts from the standpoint of the impartial observer in the case of each of the men here involved. Sager, after discharge, attempted to get back his job and was rebuffed. Camy made no attempt, deeming it useless, not only because respondent would not have discharged him if it had wished him to continue

in its employ, but also because he had been informed by a friend that the superintendent of division would "absolutely not" let him come back. And Camy at this time knew that Sager had tried and failed to get back to work. On the basis of the record of this proceeding the Trial Examiner believes that reapplication by Camy would have been a vacuous gesture.

17. Respondent discharged V. R. Sager and H. A. Camy on March 18, 1936, and May 6, 1936, respectively, and has since refused them employment, for the reason that V. R. Sager and H. A. Camy joined and assisted a labor organization known as The Brotherhood of Locomotive Firemen and Enginemen and engaged in concerted activities, for the purpose of collective bargaining and other mutual aid and protection. By said discharge and refusal to employ said V. R. Sager and H. A. Camy, respondent has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the National Labor Relations Act. By said discharge and refusal to employ said V. R. Sager and H. A. Camy, respondent has discouraged membership in the labor organization known as The Brotherhood of Locomotive Firemen and Enginemen.

60 18. Witnesses for respondent frankly admitted that the attitude and labor policy of the company is today the same as in the past. The open and admitted hostility of the company to the Brotherhood was sought to be explained on the ground that the Brotherhood has consistently opposed bus applications for franchise; and that moreover, on occasion, the Brotherhood has taken a position favorable to its members who are employed on railroads and inimical to the interests of its members employed by bus companies. Documentary evidence in support of this position was introduced by respondent. One may admit such a conflict of interest on the part of the Brotherhood as regards its members who are employed on railroads and its members who are employed on bus lines. It is not, however, for respondent to question whether or not the representatives chosen by the men are the best possible representatives they might choose. Nor is it, in the opinion of the Trial Examiner, a matter of any interest to the Board whether the choice made by the employees is good or bad. The fact is that certain employees desire to be represented by the Brotherhood. That fact should suffice. Respondent in this case has gone far beyond merely stating its position in respect to the unworthiness of the representative chosen. The position taken by respondent is made still more untenable in light of evidence in the record, previously noted, that such hostility would be manifested not only to the Brotherhood but indeed to any labor organization. And again, two directors of respondent are officers of the Southern Pacific Company, part owner of respondent.

19. A document prepared by the Bureau of Labor Statistics of the United States Department of Labor (Board Exhibit 9, shows strikes and lockouts in the motor transportation industry in 1935, and in January to July, inclusive, 1936, by major issues involved. Thus in 1934 there were 67 strikes and lockouts in the industry involving

approximately 68,000 workers, and resulting in approximately 890,000 man-days of idleness. In the period from January to July 1935, 47 strikes and lockouts occurred, involving approximately 32,000 workers and resulting in approximately 170,000 man-days of idleness. One of the major issues involved in these strikes and lockouts, according to this exhibit, was the issue of organization, i. e., recognition, discrimination, etc., which accounted for 25 out of the 67 strikes and lockouts in 1934 and 24 out of the 47 strikes and lockouts in the period from January to July 1935, i. e., better than 50 per cent. Respondent does not appear to have contributed to such statistics, but the potential interruption of interstate commerce inherent in its labor policy is too obvious to need comment.

While respondent contends that its employees here involved are engaged on local runs, wholly intrastate, the record also indicates that these local runs are part of an interstate system and that some passengers, on all of the local runs, carry interstate tickets. Respondent is engaged in interstate transportation by highway, and the fact that for purposes of practical administration this service is subdivided into some runs which are wholly local in character and others which actually do cross state lines is, in the opinion of the Trial Examiner, wholly immaterial. As previously noted, not only is respondent engaged in interstate transportation, but also is closely linked by stock ownership and otherwise to a system transcontinental and nationwide in character. Strife on its lines would necessarily affect its ability to carry out interstate shipments and the interstate transportation of passengers.

20. The Trial Examiner finds that respondent's conduct as set forth in all the foregoing findings of fact burdens and obstructs commerce among the several states and the free flow of such commerce, and tends to lead to labor disputes burdening and obstructing commerce and the free flow of commerce among the several states.

CONCLUSIONS AND RECOMMENDATIONS

Upon the basis of the foregoing findings of fact, the undersigned determines and concludes:

1. The Brotherhood of Locomotive Firemen and Enginemen is a labor organization, within the meaning of Section 2, subdivision (5), of the National Labor Relations Act.

2. Respondent, by dominating, interfering with, and contributing support to a labor organization of its employees known as "Pacific Greyhound Drivers' Association" has engaged and is engaging in an unfair labor practice affecting commerce, within the meaning of Section 8, subdivision (2), and Section 2, subdivisions (6) and (7), of the National Labor Relations Act.

Since the labor organization above referred to, as presently constituted, has no legal existence as a representative of respondent's employees for purposes of collective bargaining, it follows that the

current agreement between respondent and that organization is void and of no effect.

3. Respondent, by its discharge of V. R. Sager and H. A. Camy because they joined and assisted a labor organization, discriminated in regard to their hire and tenure of employment, thereby discouraging membership in a labor organization, and by reason of such discrimination, has engaged and is engaging in an unfair labor practice affecting commerce, within the meaning of Section 8, subdivision (3) and Section 2, subdivisions (6) and (7), of the National Labor Relations Act.

4. Respondent, by all the acts set forth in the above findings of fact and in these conclusions of law, has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the National Labor Relations Act, and has engaged and is engaging in unfair labor practices affecting commerce, within the meaning of Section 8, subdivision (1) and Section 2, subdivision (6) and (7), of the National Labor Relations Act.

Wherefore, the undersigned recommends that:

(1) Respondent cease and desist from interfering with, restraining and coercing its employees in the exercise of the right to self-organization, to form, join, or assist labor organizations, to
63 bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection; from dominating, interfering with or contributing financial support to any labor organization of its employees; and from discouraging membership in any labor organization by discrimination in regard to hire or tenure of employment or any term or condition or employment.

(2) Respondent, in order to effectuate the policies of the Act:

(a) Within 30 days from the date of filing of this Intermediate Report disestablish "Pacific Greyhound Drivers' Association" as the representative of its employees for the purposes of collective bargaining by taking immediately the following steps:

1. Post suitable bulletins in places conspicuous to the drivers at each division headquarters announcing the disestablishment of "Pacific Greyhound Drivers' Association", said bulletins to remain posted for a period of thirty consecutive days at all division headquarters.

2. Notify each division superintendent and each representative of "Pacific Greyhound Drivers' Association" to the same effect.

3. Cease dealing with "Pacific Greyhound Drivers' Association" or its representatives or individual members of that organization in any way, shape or form.

(b) Offer to V. R. Sager and H. A. Camy immediate and full reinstatement to their former positions, without prejudice to any rights and privileges previously enjoyed by them.

(c) Immediately make whole V. R. Sager and H. A. Camy for any loss of pay each has suffered by reason of his discharge, by

payment to him of a sum of money equal to that which he would normally have earned in respondent's employ from the date of his discharge to the date of the offer of reinstatement, computed at the rate, normal and overtime, for the of hours, normal and overtime, equal to the average amount earned by those employees of respondent doing similar work in similar positions since the discharge of V. R. Sager and H. A. Camy, less any amount earned by V. R. Sager and H. A. Camy since the date of his respective discharge.

(d) Immediately post notices, similar in form and placement to the bulletins referred to in paragraph (2) 1 above, stating that respondent will cease and desist in the manner aforesaid and that the notices so stating will remain posted for a period of thirty (30) consecutive days from the date of posting.

It is further recommended that unless within ten (10) days of the filing of this Intermediate Report respondent notify the said Regional Director for the Twentieth Region in writing that it will comply with the foregoing recommendations, the matter be referred forthwith to the National Labor Relations Board and that the said Board issue an order requiring respondent to take the action aforesaid.

CHARLES A. WOOD,
Trial Examiner.

Before the National Labor Relations Board

C-134

IN THE MATTER OF PACIFIC GREYHOUND LINES, INC. AND BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN

Mr. David C. Shaw and Mr. Bertram Edises, for the Board.

Mr. S. C. Phillips and Mr. W. E. Jones, of San Francisco, California, for the Brotherhood of Locomotive Firemen and Enginemen.

Mr. H. C. Lucas of San Francisco, California, and Bowen, Bost, Flannagan & Rogers of Minneapolis, Minnesota, by Mr. Ivan Bowen, for the respondent.

Mr. Frederick P. Mett, of counsel to the Board.

Decision

Statement of Case

On April 7, 1936, the Brotherhood of Locomotive Firemen and Enginemen, hereinafter referred to as the Brotherhood, filed with the Regional Director for the Twentieth Region a charge that the Pacific Greyhound Lines, Inc., San Francisco, California, hereinafter referred to as the respondent, had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of the National Labor Relations Act, 49 Stat. 449, approved July 5, 1935, hereinafter referred to as the Act. Thereafter the National Labor Relations Board, hereinafter referred to as the Board, by the Re-

gional Director for the Twentieth Region issued a complaint and an amended complaint against the respondent on May 29, 1936, and June 10, 1936, respectively.[1]

On June 25, 1936, the Board, acting pursuant to Article II, Section 37 (c) of National Labor Relations Board Rules and Regulations—Series 1, as amended, ordered a charge which had theretofore been filed with the Regional Director for the Twenty-first Region by the Brotherhood, transferred to the Twentieth Region for the purpose of consolidation with the proceeding already instituted in that Region. On July 28, 1936, the Board, by the Regional Director for the Twentieth Region, issued a second amended and consolidated complaint, hereinafter referred to as the complaint, against the respondent, alleging that it had engaged in unfair labor practices as alleged in the two charges. With respect to the unfair labor practices, the complaint in substance alleged that:

66 1. The respondent discharged and refused to employ V. B. Sager and H. A. Camy for the reason that they joined and assisted the Brotherhood, a labor organization, and engaged in concerted activities with other employees of the respondent for the purpose of collective bargaining and other mutual aid and protection.

2. The respondent prior to July 5, 1935, initiated and formed Drivers' Association, Pacific Greyhound Lines, a labor organization of its operating employees, hereinafter referred to as the Drivers' Association, and has at all times since July 5, 1935, dominated, interfered with, and contributed support to the Drivers' Association.

3. The respondent, by its officers and agents, has at numerous times since July 5, 1935, urged, persuaded, and warned its employees to refrain from becoming or remaining members of the Brotherhood, and has threatened its employees with discharge if they became or remained members of the Brotherhood; and has, since July 5, 1935, by sundry and divers acts of interference, intimidation, and coercion, restrained its employees from joining or assisting the Brotherhood, and from engaging in concerted activities for the purpose of collective bargaining and other mutual aid and protection.

The complaint and accompanying notice of hearing were duly served upon the respondent. In its answer, filed on July 23, 1936, under circumstances related hereafter, the respondent admitted its corporate organization; alleged that it "is a common carrier for hire by motor vehicle in transporting passengers, baggage, mail, and express upon the public highways for the general public in the States of Oregon, California, Nevada, Utah, Arizona, New Mexico, and Texas, and has certain contracts with railway and express companies in its business as a common carrier"; further alleged that it

[1] The complaint alleged that the respondent had committed unfair labor practices within the meaning of Section 8, subdivisions (1), (2), and (3) of the Act. The amended complaint differed from the complaint in only one minor respect. Whereas the complaint alleged that the respondent had engaged in unfair labor practices within the meaning of Section 8, subdivision (1) of the Act, by its conduct towards "its employees at San Francisco, California, and elsewhere on said Division 4," the amended complaint alleged that the respondent had engaged in unfair labor practices within the meaning of Section 8, subdivision (1), by its conduct towards "its employees at San Francisco, California, and on Divisions 4, 5, and 6 of its said lines."

"operates in connection with the motor bus transportation system known as the Greyhound Lines, and is affiliated with several Greyhound Companies through stock ownership by the Greyhound Corporation, a Delaware corporation, of the stock of Pacific Greyhound Corporation, a Delaware corporation, which owns the stock of respondent and that the various Greyhound Companies, as connecting carriers, operate a system of motor bus transportation throughout various parts of the United States"; alleged that it discharged V. R. Sager and H. A. Camy on or about March 13, 1936, and on or about May 6, 1936, respectively, for cause. Except as to the foregoing matters specifically alleged and admitted the respondent's answer denies each and every allegation of the complaint.

The hearing, originally scheduled to be conducted on June 29, 1936, by Henry Eickhoff, Jr., duly designated by the Board as Trial Examiner, was duly postponed to July 28, 1936. Commencing on that day, Charles A. Wood, duly designated by the Board as Trial Examiner in place of Henry Eickhoff, Jr., conducted a hearing at San Francisco, California. Full opportunity to be heard, to examine and cross-examine witnesses, and to produce evidence bearing upon the issues was afforded to all parties.

The respondent appeared specially at the hearing and objected to the jurisdiction of the Board on constitutional grounds. No ruling was made by the Trial Examiner on such objection. The respondent then moved to dismiss the complaint on the same grounds. This motion was denied by the Trial Examiner and the respondent took exception. Thereupon the respondent moved to dismiss the complaint for failure to state facts constituting a complaint under the Act. This motion was likewise denied, the respondent again taking exception. The respondent then filed its answer, and participated in the hearing. During the course of the hearing, counsel for the respondent moved to dismiss the complaint, "on the ground that it is not based upon the charge by an organization of which the National Labor Relations Board is cognizable of, or has jurisdiction over." The motion was denied. At the close of the Board's case the respondent made three separate motions to dismiss. The first was based on constitutional grounds; the second, on the ground that the charges should have been filed by the employees affected by the alleged unfair labor practices; the third, on the
67 ground that the proof did not sustain the allegations of the complaint. Each of these motions was in turn denied, the respondent taking exception to the Trial Examiner's rulings. At the close of the hearing the respondent moved "to strike from the record all testimony in evidence relating to the time prior to July 5, 1935, upon the ground that it is incompetent, irrelevant, and immaterial" and to dismiss the complaint "upon the ground that the proof now shows that the respondent, Pacific Greyhound Lines, has not committed any acts contrary to the provisions of the National Labor Relations Act." Each of these motions was likewise denied. The motion by counsel for the Board, also made at the close of the

hearing, "to conform the pleadings in this case to the proof," was taken under advisement by the Trial Examiner.

On August 25, 1936, the Trial Examiner duly filed his Intermediate Report in which he found that the respondent had engaged in unfair labor practices affecting commerce, within the meaning of Section 8, subdivisions (1), (2), and (3), and Section 2, subdivisions (6) and (7), of the Act. In this Intermediate Report the Trial Examiner granted the motion by counsel for the Board to conform the pleadings to the proof and a request by counsel for the Board to make two corrections in the transcript of testimony. No exceptions to the Intermediate Report were filed by the respondent.

The Board has reviewed all of the rulings made by the Trial Examiner on motions and on objections to the introduction of evidence and finds no error in such rulings. In consequence, such rulings are hereby affirmed. The respondent's objection on special appearance was based on the same grounds as its first motion to dismiss and is hereby overruled. The Board also finds that the Trial Examiner acted properly in granting the request of counsel for the Board to make two corrections in the transcript of the testimony, and in making such request for corrections a part of the record.[2]

Upon the entire record in the case, the stenographic report of the hearing and all the evidence, including oral testimony and other evidence offered and received, and the Intermediate Report, the Board makes the following:

Findings of fact

I. The Respondent and Its Business

The respondent, Pacific Greyhound Lines, Inc., is a corporation organized under and existing by virtue of the laws of the State of California, having its principal office in the City and County of San Francisco, in the State of California. District offices are maintained by the respondent in Los Angeles, California, and in Portland, Oregon.

The respondent is engaged in the transportation by motor carrier of passengers, baggage, United States mail, and express over the public highways of seven of the Western States, namely, Oregon, California, Nevada, Utah, Arizona, New Mexico, and Texas. It operates intrastate and interstate busses on regular schedule over 7,800 miles of highway in these states. For convenience in operation and for various administrative purposes the respondent has divided its system into eight divisions. Its own lines connect Portland, Oregon, with such distant points as El Paso, Texas, and Albuquerque, New Mexico, as well as with such intermediate points as San Fran-

[2] Counsel for the Board had requested that the name "Dick Fagen" in line 8, page 283, be changed to Vic Sager, and that the name "Mr. Fagen", in line 7, page 284, be changed to Mr. Sager. The Intermediate Report makes the justification for granting the request clear.

cisco and Los Angeles, California; and Phoenix, Arizona. One of its lines connects Santa Rosa, California, with Salt Lake City, Utah.

In its extensive operations beyond these points, its utilizes
68 the facilities of its three wholly-owned subsidiaries, Russian River Stages, Golden Eagle Western Lines, Inc., and Independent Stage Company. The respondent as well as its subsidiaries does business under the trade name or style of "Greyhound Lines."

The respondent is wholly owned and controlled by the Pacific Greyhound Corporation, a Delaware Corporation, that corporation in turn being owned by The Greyhound Corporation, the Southern Pacific Co., The Great Northern Ry. Co. and others. The respondent is "closely affiliated with the following Greyhound Systems: Eastern Greyhound Lines, Pennsylvania Greyhound Lines, Central Greyhound Lines, Atlantic Greyhound Lines, Capitol Greyhound Lines, Dixie Greyhound Lines, Teche Greyhound Lines, Richmond Greyhound Lines, Northland Greyhound Lines, Southwestern Greyhound Lines, * * * Canadian Greyhound Lines, Ohio Greyhound Lines and Illinois Greyhound Lines. Said affiliation is effectuated through ownership, directly or indirectly, of voting capital stock by The Greyhound Corporation, a corporation of the State of Delaware, and the rights and powers arising by virtue thereof are used to promote the operation of the motor carrier companies composing said Greyhound Lines as distinct, independent enterprises coordinated with one another into an integrated system of national transportation; * * * the business, traffic, interests, and affairs of said Greyhound Lines are mutual and common in that they jointly solicit, sell and provide transportation, for the continuous carriage of passengers, mail, express and newspapers, and function and operate through joint traffic, operating and facility arrangements as a system constituted of the lines of said motor carriers."[3] In 1935 the respondent paid to The Greyhound Corporation the sum of $7,200 representing a general management fee for supervisory and other services.

During the year 1935, the respondent transported 5,357,340 passengers, and its passenger-car mileage totalled 25,962,682. On December 31, 1935, it had in its employ a total of 1,239 persons, 502 of whom were passenger motor coach operators. Most of the operators have regularly assigned intrastate or interstate runs, and the remainder are "extra" or "on call" operators. The respondent's operators testified that operators on wholly intrastate runs carry between two and five interstate passengers on each trip.

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[3] Board Exhibit 3 (2). This is a certified copy of the application of the respondent and its subsidiaries, made under oath to the Interstate Commerce Commission, for a certificate to operate as a common carrier under the Motor Carrier Act of 1935.

II. Attempts to Organize the Respondent's Operators, and the Respondent's Reactions Thereto

(a) Early activity of the Brotherhood

The Brotherhood is a labor organization, organized "for the purpose of uniting Locomotive Enginemen and Hostlers, * * * for the protection of their interests and the promotion of their general welfare * * *" It is one of the "Big Four" Railroad Brotherhoods and is unaffiliated with any other labor organization. Although originally designed as an organization exclusively for railroad employees, it has in recent years allowed motor coach operators to come within its fold. These operators may join any local lodge of the Brotherhood in their territory and membership entitles them to the identical privileges accorded to the railroad employees. Membership in the Brotherhood totals approximately 70,770, only a small number of whom are motor coach operators.

During July 1933, shortly after the Brotherhood had announced its new policy of allowing motor coach operators to join its ranks, about 100 of the respondent's operators went to the San Francisco
69 office of C. W. Moffitt, Vice-Chairman of the General Grievance Committee of the Brotherhood on the Southern Pacific Lines, and told him that they desired to form a union affiliated with the Brotherhood. Permission to file applications for membership in the Brotherhood was immediately given to these men. By the latter part of September 1933, a great many of the respondent's operators had filed such applications with Moffitt. Thereafter, organization activity for the Brotherhood steadily continued. At one time during the fall of 1933, 264 of the respondent's 425 operators had signed authorization certificates empowering the Brotherhood to represent them for the purpose of collective bargaining with the respondent.

From the very beginning, the respondent was aware of the activity of the Brotherhood among its operators. Faced with the possibility of having to deal with the Brotherhood, the respondent immediately took steps to defeat the organizing drive. It discouraged membership in the Brotherhood by warning its employees that such membership would not be for their best interests. Operators were urged, persuaded, and coerced to refrain from joining the Brotherhood and threatened with discharge if they did join. In these and other ways, the respondent made every effort to convey to its operators its open hostility toward the Brotherhood.

To further check the activities of the Brotherhood among its operators the respondent fostered the organization and growth of the Drivers' Association, Pacific Greyhound Lines, under circumstances related below (See IV, (c)). Although a great many members of the Brotherhood gave up their membership and joined the Drivers' Association as a result of the respondent's activities, the Brotherhood nevertheless continued to organize the respondent's operators. In April 1934, confident that its members represented a majority of the

respondent's operators, the Brotherhood petitioned the National Labor Board to conduct an election among the respondent's operators to determine whether it or the Drivers' Association was entitled to represent the respondent's operators for the purpose of collective bargaining. On April 19, 1934, ten days before the scheduled date of this election, the respondent, as a part of its intensive campaign to defeat the Brotherhood, called a joint meeting of its operators on Divisions 4, 5, and 6. At this meeting, held at Oakland, California, W. E. Travis, president of the respondent, delivered a speech in which he referred to certain conduct of the Brotherhood as high-handed and selfish, urged the operators to refrain from voting for the Brotherhood, and urged them to vote instead for the Drivers' Association. This speech was later mimeographed and sent to officials of the respondent in other divisions with instructions to bring it to the attention of the operators. This campaign of interference by the respondent with the rights of its operators to self-organization resulted in a defeat of the Brotherhood at the election of April 29, 1934. After this election the Brotherhood movement died down among the respondent's operators.

(b) ORGANIZATION OF THE BROTHERHOOD OF MOTOR COACH OPERATORS

During its intensive campaign to check the activities of the Brotherhood, the respondent through its president, indicated that it might not be as antagonistic or hostile to some other labor organization among its operators. Aware of this possibility, and being apparently dissatisfied with the Drivers' Association as an organization to represent them, several of the respondent's operators organized the independent Brotherhood of Motor Coach Operators in August 1934, and elected Charles H. Perryman, president, and Milton L. Seeman, secretary. Very soon thereafter both Perryman and Seeman were discharged. Upon their complaint, and after hearing, the old National Labor Relations Board found that they had been discharged because of their union affiliation and activities and ordered
70 their reinstatement.[4] Perryman and Seeman were however never reinstated by the respondent. With the discharge of these two men the activities of the Brotherhood of Motor Coach Operators among the respondent's operators ceased.

III. THE RENEWAL OF BROTHERHOOD ACTIVITY AFTER THE PASSAGE OF THE ACT

During the latter part of July 1935 a movement to reestablish the Brotherhood was started among the respondent's operators. The protection guaranteed by the Act prompted several of the respondent's operators at that time to openly engage in organization activities for the Brotherhood. The respondent immediately became aware

[4] In the Matter of Pacific Greyhound Lines, Inc., and Charles H. Perryman and Milton L. Seeman, 2 N. L. R. B. (old) 337.

of this renewed activity but did not take strong steps to curb it, apparently believing that the decisive defeat of the Brotherhood in the election of April 29, 1934, and the firm entrenchment of the Drivers' Association among its operators thereafter, had created an insurmountable obstacle to a "come-back" by the Brotherhood. However, by October 1935 the Brotherhood had again gained a foothold among the respondent's operators. Thereafter, interest in the Brotherhood grew steadily, resulting in a huge increase in membership, and a proportionate decrease in the membership of the Drivers' Association. By February 1936 the Brotherhood had so firmly reestablished itself as to constitute a threatening force, of concern not only to the respondent, but to the Drivers' Association as well.

IV. The Unfair Labor Practices

(a) The respondent's continued interference with the rights of its operators after the passage of the act

In the early stages of the Brotherhood's renewed activity the respondent informed its employees that the Brotherhood was not a proper organization to join. During this period the respondent did not hesitate to express openly to its operators its firm belief in the Drivers' Association and its distrust of the Brotherhood.

On one occasion during the fall of 1935, L. D. Jones, the respondent's general manager, addressed a meeting of the operators. With respect to this meeting Warren Macy, one of the operators, testified as follows:

"Q. What did Mr. Jones say at that meeting?

"A. He first discussed some of the working conditions, and then he told us that he was going to speak to us two ways: He was going to speak to us officially and unofficially.

"Q. What did he say officially?

"A. He said we could join any damn union we wanted to; * * *

* * * * * * *

"Q. What did he say unofficially?

"A. * * * first he told us that Mr. Travis had always been opposed to organized labor; had never dealt with it; and that he said he would step out of the President's chair * * * rather than to write a contract with the Brotherhood. He told us then that he didn't think that we would ever get any benefits by being a member of any labor organization."

With the growing interest of its operators in the Brother-
71 hood, the respondent intensified its efforts to curb the activities of the Brotherhood. Operators who were members of the Brotherhood were spied upon and threatened with discharge unless they discontinued their membership in that organization. On November 12, 1935, J. W. Krug, the respondent's superintendent of operations, told Les Thompson, an operator, that it was "damnable disloyal" for him to be a member of the Brotherhood, and insisted

that he resign for his own good. Krug also informed Thompson that he knew that Thompson had been listening to Vincent R. Sager, another operator, who was telling "damnable lies" about the president of the Drivers' Association, and that it was "too bad for Thompson." Thereafter, Fancher, the respondent's agent at Santa Cruz, California, who was very much opposed to the Brotherhood, admitted to Thompson that "he was out to get all the dope on the boys, the drivers that belonged to the Brotherhood."

Thompson was discharged by Krug on April 23, 1936, allegedly for cause. Several days later, Fancher informed Thompson that he was discharged not for the reasons given by Krug but because of his Brotherhood membership and activities. However, no charge was filed against the respondent as a result of this discharge.

At Christmas time, in 1935, Sager presented Jones with a gift from the Brotherhood. On January 27, 1936, Jones returned the gift to Sager and in an accompanying communication stated:

"* * * it is very apparent that some narrow-minded drivers are assuming that I am in favor of their joining the Brotherhood. Needless to say, you well know my feelings toward the Brotherhood, or any other organization, so far as our men joining it is concerned, as long as they are receiving fair treatment and good wages. This was fully discussed with you a couple of years ago, and it should be unnecessary for me to have to say that I think the boys are making a mistake by associating themselves with any organization that is going to require them to pay high dues when the benefits that they might receive would be negligible." (Board Exhibit [illegible].)

By March 1936, at the height of the Brotherhood activity, the respondent was so violently expressing its hostility toward the Brotherhood that meetings of the Brotherhood, which had theretofore been conducted openly, were thereafter conducted secretly. Sager testified that the meetings "were not made prominent because we didn't want to put the men on the spot." Membership in the Brotherhood was also kept secret.

At the hearing the respondent's counsel expressly admitted that the respondent had urged, persuaded, and warned its operators not to join the Brotherhood. The respondent, however, sought to explain and justify such conduct on the ground that the Brotherhood had at times endeavored to curb the development and extension of motor carrier transportation lines by appearing before various commissions in opposition to applications for franchise and by sponsoring and supporting legislation favorable to the railroads and their employees and inimical to the motor carriers and their employees.

It may be that the Brotherhood, in its dual capacity of representative for the enginemen and firemen employed in the railroad industry and for the motor coach operators employed in the motor carrier transportation industry, at times finds itself representing two groups of employees with conflicting interests. This cannot, however, justify the respondent's conduct toward its operators. In any event, the respondent went farther than merely conveying to its operators the

idea that the Brotherhood represented conflicting interests. In addition the respondent urged, persuaded, and warned its operators not to join the Brotherhood and threatened them with discharge if they joined or remained members. By its conduct the respondent has clearly interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

72 (b) THE DISCHARGES

(1) The discharge of Vincent R. Sager

Vincent R. Sager worked for the respondent as an operator on one of its motor coaches running between San Francisco and San Luis Obispo in the State of California. He had worked for the respondent since the time of its inception. Previously he had been in the employ of another motor coach carrier which was absorbed by the respondent when the latter came into existence. Sager's duties involved acting not only as driver, but as conductor and baggageman as well.

Sager was one of the men who went to Moffit in July 1933, for the purpose of organizing, among the respondent's operators, a union affiliated with the Brotherhood. He became a member of the Brotherhood in the early part of September of the same year. From the beginning the respondent was advised of Sager's activities in the Brotherhood. During September 1933, Jones, the respondent's general manager, told Sager that he and the rest of the boys were foolish in entertaining the idea of affiliating with the Brotherhood.

On September 28, 1933, shortly after the organization of the Drivers' Association, Travis, having been informed that Sager on the previous day had signed up 27 of the operators for membership in the Brotherhood, called Sager to his office and asked him why he was so antagonistic toward the respondent. Sager related his grievances to Travis, informed him that nothing had been done with respect to such grievances, and that the Brotherhood was being organized as an effective instrument to deal with the respondent. Travis then stated that he would rather deal with any other labor organization than with the Brotherhood. On this occasion Sager turned down Travis' offer to "talk to the boys with reference to the company union" in return for certain favors. Travis then sent Sager away with the following words: "* * * 'It is very plain to me if I had solicited you to assist in the formation of this company union before the Brotherhood secured your services, it is very evident that we wouldn't have the trouble that we are having now.'"

On October 3, 1933, after having been prevailed upon to sign an application for membership in the Drivers' Association,[3] as well as a blank authorizing the respondent to deduct membership dues, Sager was called to Travis' office. There, in Sager's presence, two

[3] This application, although directed to the Employees' Association Pacific Greyhound Lines, the predecessor of the Drivers' Association, was actually an application for membership in the Drivers' Association.

representatives of the Drivers' Association informed Travis that Sager "had signed a company union blank." At that time Travis stated that it was necessary that "all get behind the company union and put it over before the Brotherhood got in." While in Travis' office, Sager was prevailed upon to sign his name to a telegram addressed to Warren Macy, the key-man in the Brotherhood at Los Angeles. This telegram contained obvious untruths with respect to the membership in the Drivers' Association and urged Macy to get his division in line for that organization. Shortly thereafter Sager was called from Travis' office to answer a phone call from his wife. When he returned he told Travis that his wife "had threatened to put his clothes out in the hall" if he joined the Drivers' Association and asked Travis to withdraw his application for membership in that organization. The next day, Travis called Sager's wife to his office and told her that anyone who did not work in harmony with his plans for a company union would have to be eliminated.

During the following months Sager openly engaged in organization work for the Brotherhood, laying off from work at times to do so. Although lay-offs for any reason had theretofore been freely allowed, the respondent issued a notice on November 27, 1933, criticizing its operators on assigned runs for indiscriminate lay-offs. Thereafter, although indiscriminate lay-offs were still allowed in the cases of others operators, Sager's requests for lay-offs were refused. About this time Sager was also constantly reminded by Krug that unless he "kept his nose clean" he would be let out. Sager was superior in all respects to the average operator employed by the respondent; the admonition could not have referred to the performance of his duties as an operator. F. B. Lyons, an operator employed by the respondent and an intimate friend of Sager, testified that in December 1933, Krug, the respondent's superintendent of operations, said to him that Sager "has got a desk in the Brotherhood office, it won't make any difference whether he loses his job or not."

After the election of April 29, 1934, Sager's Brotherhood activities ceased. However, in late July 1935, Sager again became active, and began soliciting for the Brotherhood among the operators on Divisions 4, 5, and 6. Most of his work for the Brotherhood was carried on by him on his regularly assigned relief days. On several occasions, however, he took leave from his work in order to carry on his organizing activities. The respondent never complained to Sager that his work for the Brotherhood was interfering with his work as an operator.

On August 29, 1935, Jones called Sager to his office and told him that he had heard that "this Brotherhood activity was under way again" and that Sager was taking an active part in it. Sager admitted that the Brotherhood was active again and that he was in the midst of that activity. Jones then stated that Sager and the rest of the operators "were foolish for entertaining the Brotherhood idea."

On September 3, 1935, Krug called Sager with respect to the loss of a piece of freight. Sager disclaimed fault stating that he did not remember hauling the item. However, because the claim amounted to only $4.40, Sager paid the amount to Krug in full settlement. On this occasion Krug accused Sager of taking an active interest in the Brotherhood and reminded him of a promise which Krug claimed he had made after the election of April 29, 1934, to consider the Brotherhood "a closed book." Sager denied that he was very active in the Brotherhood and further denied having made any promise to forget about the Brotherhood. When Sager left Krug's office, he was warned that he would be held to his promise to consider the Brotherhood "a closed book."

Shortly after this conversation with Krug, M. W. Woods, the respondent's head agent at San Jose, told Sager that he was "on the spot." Sager testified that Woods discussed his organizing activities with him, and that "Mr. Woods told me that I was walking on thin ice and I would have to walk a pretty straight line because he had been instructed to turn me in for any violation of the rules or regulations of any kind."

On October 7, 1935, Sager applied to the respondent's dispatcher to be relieved on the two following days. The dispatcher informed Sager that there were plenty of "extra" men available and that he could see no reason why he could not be relieved, but that Sager would have to take up the matter with Krug. When, later the same day, Sager saw Krug, he was told that under no circumstances would he be allowed to have the time off.

In January 1936, Sager was elected chairman of the drivers' division of Lodge 91 of the Brotherhood. Thereafter he took an even greater interest in the organization of the Brotherhood.

At 5:30 P. M. on March 7, 1936, the respondent's dispatcher at San Francisco called upon Sager to make an extra run to the Tanforan race track. Sager informed the dispatcher that he had had no sleep since his last scheduled run which had ended late in the morning of the same day, and that he was tired. Sager testified that after the dispatcher insisted that he make the run, he agreed, because he was fearful that his refusal might be looked upon as an act of insubordination. Sager proceeded to Tanforan where he
74 picked up a load of passengers and started back to San Francisco. On the way back to San Francisco, his coach collided with the rear end of an automobile driven by one Lew Harnish, resulting in a property damage claim of $55.00 against the respondent.

Immediately upon his arrival at San Francisco, Sager submitted a form report of the collision along with a statement of the facts and circumstances surrounding the collision, to Krug's secretary. The latter thereupon phoned Krug to find out whether Sager was to "to go or not." Krug told his secretary that Sager was to be taken out of service, and the secretary so advised Sager.

That night Krug and Earl Hensley, the respondent's claim and safety manager, went to the scene of the collision with a flashlight

to investigate. There they found skid marks which they claimed were made by the motor coach driven by Sager. On the following day Krug went to the scene of the collision to survey the ground and to take pictures. Later on the same day he read the form report and the accompanying statement submitted by Sager. Krug thereafter made up his mind that Sager was responsible for the collision. At the hearing Krug testified that his belief that Sager was guilty of negligence and totally responsible for the collision was based upon the facts stated in the report to the effect that at the time Sager's attention was first called to danger of accident he was 75 feet away from the point of the accident, was then traveling at a speed of 40 miles an hour, and applied his brakes when approximately 75 feet from the point of accident. The report, however, further disclosed that the motor coach driven by Sager was proceeding in the third lane of a six-lane high-way; that Harnish's car was proceeding in the same direction in the outside lane; that just before the collision Harnish's car "cut at an angle of forty-five degrees across the second lane into the third lane" and there stopped abruptly in the direct path of the motor coach driven by Sager.

On March 9, 1936, Krug called Sager to his office for the purpose of examining the form report and statement concerning the collision that he had submitted on March 7, 1936. After examining the report and statement made by him, Sager was told to lay off and wait until the respondent's insurance department submitted its report on the collision, at which time he would be told whether or not he was to remain in the respondent's employ. On the afternoon of the same day, before having completed its investigation, the respondent, through Hensley, settled with Harnish the claim arising out of the collision. At the time of this settlement Hensley had before him the conflicting statements of Harnish and Sager as to the cause of the collision.[4]

Although Krug had full authority to hire and discharge, he discussed Sager's case with Travis on March 11, 1936. The latter agreed with Krug's conclusion that Sager was responsible. Krug testified that he discussed Sager's case with Travis because he knew that Sager had had numerous conferences with Travis concerning the Brotherhood. On the same day, Travis called Hensley and asked him for his opinion as to Sager's responsibility and was told that "it appeared" as though the respondent was legally liable; the inference was that Sager was negligent. When Hensley told Travis that the claim arising out of the collision had already been settled but that not all of the witnesses had been interviewed, Travis ordered Hensley to get statements from all of the witnesses. The statements which were later secured, were conflicting as to the cause of the collision.

On March 13, 1936, after Hensley had made the same report to Krug that he had made to Travis, Krug called Sager to his office

[4] In his report of the collision, Harnish stated that he had given proper notice of his intention to make a turn to the left across the second and third lanes, and that he had not come to an abrupt stop while crossing lane three.

and discharged him because of "full responsibility for the accident and speeding." Krug told Sager that he had nothing to do with the discharge, orders having come from the head office.

When asked to sign a notice of termination of employment, required under the California law, setting forth as the cause for the discharge the reasons given by Krug, Sager refused, because he felt he was being discharged for his activities in the Brotherhood and not for the reasons stated in the notice.

Hensley testified that rear-end collisions were looked upon by the respondent as "of very grave importance," but that such accidents do not in and of themselves constitute an offense warranting discharge. He further testified that whether or not a man is to be discharged as an immediate consequence of a rear-end collision depends upon his past record.

At the time of the collision Sager had driven between 450,000 and 500,000 miles for the respondent. His accident record, including the collision of March 7, 1936, was one chargeable accident for every 150,000 miles of driving. The respondent considers one chargeable accident for every 100,000 miles of driving a good record. On many occasions the respondent has awarded Sager with tokens of merit for his splendid record as a driver. As late as November 1935, Sager was awarded a plaque for having completed one year of driving without an accident. In December 1935, Sager received a bonus based upon his good driving record.

Immediately after his discharge, Sager made several unsuccessful attempts to talk to Travis. On March 18, 1936, Travis finally agreed to see Sager. On that day Sager went to Travis' office and there outlined in detail the facts surrounding the collision of March 7, 1936, only to be told by Travis that he was not discharged because of that collision but because of the multiplicity of accidents in general during the course of his employment. Before this time no one had ever told Sager that he was having too many accidents.

On April 2, 1936, Sager was given a certificate of service by the respondent which stated that he had been "discharged for responsibility of accident." A certificate of service is given to every employee who leaves the respondent's employ. Since the date of his discharge, Sager has tried to secure other employment but without success. At the time of his discharge he worked approximately 26 days a month and earned an average daily wage of $7.97.

(2) The discharge of Henry A. Camy

Henry A. Camy worked for the respondent as an operator on one of its motor coaches running between Los Angeles and Fresno, in the State of California. Like Sager, Camy had worked for the respondent since its inception, and before that time had worked for a motor coach carrier absorbed by the respondent when the latter came into existence. As an operator Camy's duties were the same as those of Sager.

Camp joined the Brotherhood in the fall of 1933. On October 13, 1933, J. H. Hodge, the respondent's assistant general manager, asked Camy whether he was a member of the Brotherhood, and Camy answered that he was. Several days later Hodge called Camy to the respondent's depot at Fresno and there had him execute an instrument addressed to the Brotherhood, whereby he revoked the power of attorney to represent him in all matters pertaining to employment, wages, and working conditions, previously given by him to the Brotherhood. With respect to the pressure put upon him to execute the instrument, Camy testified: "Well, I figured that if I want to hold my job I had better sign it."

When the Brotherhood renewed its activities among the respondent's operators after the passage of the Act, Camy rejoined the organization. Thereafter he took a very active interest in its affairs, talked to the respondent's operators "trying to get them to join," and openly distributed applications for membership. He was Macy's "right hand man" in organizing the respondent's operators in the south.

On March 7, 1936, on his run between Plaza Junction and Fresno, Camy lost a piece of freight. On this run Camy was instructing a student driver as well as performing his regular duties. In the confusion of loading and unloading the piece of freight involved 76 was left on the runing board of the motor coach and was lost en route between Plaza Junction and Fresno. Although the respondent made Camy pay for the loss of this item, it did not follow its general practice in such cases of giving him demerits and thus reducing his bonus.

During the first days of May 1936, Camy was particularly active in soliciting memberships in the Brotherhood among the respondent's operators in the south. On May 4, 1936, upon completing his run from Los Angeles to Fresno, Camy was accused by Hodge of having lost a valuable letter on the same run on May 2, 1936. Hodge at that time told Camy that the letter had been found by another driver at Greenfield Corners en route between Los Angeles and Fresno. Hodge also called Camy's attention to the fact that this was his second loss within a relatively short period of time and stated, "I guess I will lay you off for a couple of days; come back and see me in a couple of days."

On May 6, 1936, Camy reported back to Hodge. At that time Hodge discharged Camy, assigning as the reason the fact he had lost the piece of freight and the valuable letter "too close together." Hodge then told Camy that the company would not stand for so many losses and that his discharge was not the result of personal grievances. Hodge added: "If you want a recommendation, I will give it to you. If you want to go work anywhere else, I will give you a recommendation any time." Before leaving Hodge's office Camy signed a notice of termination of employment prepared by Hodge's secretary which set forth "Failure to properly perform driving duties" as the cause of his discharge.

Previous to the loss of the piece of freight on March 7, 1936, Camy's services had apparently been satisfactory. Nothing to the contrary was shown by the respondent. As late as March 25, 1936, the respondent wrote Camy commending him upon his accident record. On May 12, 1936, Camy was given his certificate of service by the respondent, which stated that he had been discharged for "failure to properly perform driving duties," and stated further that his services had been "generally satisfactory."

At the hearing Hodge testified that he had discharged Camy "mostly on account of insubordination" and that the reason he did not so state in Camy's certificate of service was that he did not want "to put something in there that may hurt him." According to Hodge, Camy's insubordination consisted of a remark made at the time he told Camy he would have to lay him off for losing the valuable letter. This remark was, "You're the boss; go ahead and fire me." Hodge stated that but for this insolent remark, Camy would not have been discharged. Hodge admitted that Camy's remark had not been made as a challenge, and that during his 11 years of service he had been "a very peaceful chap" and had never been insolent or insubordinate before.

Since his discharge Camy has made no effort to be reinstated. He testified that he had not done so for two reasons: (1) one of the respondent's operators had told him that Hodge had stated that it would be useless for him to try to get his job back, and (2) he knew that Sager had been unable to get his job back, and felt that it would also be useless for him to try.

At the time of his discharge Camy earned an average daily wage of $7.65 and worked approximately six days every week. Since his discharge he has earned about $75.00 per month operating a stand in a hotel.

Immediately after Camy's discharge, Brotherhood activity among the respondent's operators ceased. The operators felt that such activity would result in their discharge as it had in the cases of Thompson, Sager, and Camy.

(3) Conclusions with respect to the discharges

On the basis of the facts found above, it must be concluded that Sager and Camy were discharged because of their membership in and their activities for the Brotherhood. Their activities for the Brotherhood were not a secret as far as the respondent was concerned. Sager and Camy both openly professed their membership and vigorously carried on their organizing activities under the eyes of the respondent's officers. They were both key-men in the Brotherhood, Sager in the north and Camy in the south. The respondent admits its bitter hostility toward the Brotherhood, and the facts found above show that this hostility expressed itself in many ways and on different occasions extending over a long period of time.

As far back as 1933, the respondent was looking for an opportunity to discharge Sager. No opportunity to do this presented itself prior to the election of April 29, 1934. Thereafter, until July 1935, there was no need to discharge him, the Brotherhood threat having been removed. With the renewal of the Brotherhood activity after the passage of the Act, the respondent was again seeking to rid itself of Sager, because of his renewed activities in the Brotherhood. This fact is evidenced by Krug's statement to Sager that he would hold him to his promise to forego all activities in the Brotherhood. As we have seen, Sager denied having made this promise and continued such activities. Thereafter, Sager submitted to certain hardships in order not to give the respondent any cause for discharging him. Then came the collision of March 7, 1936, followed by Sager's discharge several days later. The avidity with which Krug investigated this collision, the unusual procedure employed by him in determining whether Sager was negligent, and the unusual haste with which he made up his mind that "Sager must go", along with all of the aforementioned facts, go far to support our conclusion with respect to Sager's discharge.

The assignment of three successively different reasons for Sager's discharge tends to show that the respondent had no fixed reason at all for such discharge other than his Brotherhood activity. In view of the conflicting testimony of witnesses concerning the cause of the collision of March 7, 1936, the respondent could not have had tenable grounds for discharging Sager for "full responsibility of accident and speeding." Although the respondent has in some cases, in the past, discharged operators for rear-end collisions, discharge is not the general rule in such cases unless the operator's general record is bad.

Neither Krug nor Travis assigned a bad general record as the cause for discharge. Furthermore, Sager's employment history as evidenced by Board Exhibit 46 containing a full picture of his record could not have entered into the respondent's determination to discharge him. This history was not prepared by the respondent until several weeks after Sager's discharge. Thus Travis' later assignment of "multiplicity of accidents" as the reason for Sager's discharge was not based on facts known to him at the time of discharge since he then had no complete record of Sager's accidents. In any event, Sager's employment history reveals that he had had only three chargeable accidents during the entire term of his employment, and only a few chargeable infractions of the respondent's rules, a far better record than that which the respondent expects its operators to maintain. Furthermore, Heisley testified that Sager could not be regarded as being "accident prone."

The third reason given for the discharge of Sager, namely, "full responsibility of accident" drops speeding entirely as a partial cause of discharge. Nothing need be said regarding the matter of speeding, the respondent having effectively removed speeding as a cause by its own statement of the cause of Sager's discharge.

In Camy's case, also, the respondent has assigned three successively different reasons for his discharge. The first reason assigned was that Camy lost the piece of freight and the valuable letter "too close together." Camy admitted having lost the piece of freight. From his testimony it might be concluded, however, that this item was lost not as a result of his carelessness but rather as a result of the confusion incident to being overburdened with extra duties on the run on which the loss occurred. However, even assuming that he was negligent in losing the item, he paid for the loss, no demerits were assessed against him by the respondent, and the matter was apparently closed.

According to the respondent, the alleged loss of the valuable
78 letter occured about two months later. Camy knew nothing of the loss of this letter other than what Hodge told him on May 4, two days after the alleged loss. Since Hodge claimed that it had been found on his Los Angeles to Fresno run, Camy apparently believed that the letter was lost by him.

At the hearing, the respondent introduced the letter, which was destined to go to San Francisco, but did not produce the person who found the letter, nor did it show that Camy was the only operator who drove on the Los Angeles to Fresno run on May 2 and who could have lost it. Moreover, although the respondent keeps a record of all items of mail, freight, and express carried by its operators, no such record was introduced by the respondent to show that Camy had ever received the letter in question. The respondent's practice of having the connecting operators examine the waybills and check such waybills with the actual mail and express in the motor coach, would in our opinion have disclosed any loss when Camy turned over his motor coach to the connecting operator who took it on to San Francisco. Camy testified that the connecting operator had "signed for everything" at Fresno after checking his load; this indicates that Camy had turned over everything to that operator after completing his run. The respondent introduced no record to contradict Camy's statement that the connecting operator at Fresno "signed for everything." These considerations would seem to indicate that Camy did not lose the valuable letter.

The assignment of "failure to properly perform driving duties" entirely disregards Camy's good record as a driver. What was meant by this phrase was not made clear to Camy at the time of his discharge. Its vagueness indicates the respondent's desire to include every conceivable fault within its scope. At the hearing the respondent brought forth no circumstances other than the loss of the item of freight and the alleged loss of the letter to prove that Camy had failed to properly perform driving duties. Under the circumstances we must conclude that the respondent's assignment of "failure to perform driving duties" as the reason for Camy's discharge is not grounded in fact.

The reason given for Camy's discharge by Hodge at the hearing, namely, "insolence and insubordination", must be looked upon as a mere afterthought. The words in themselves, which Hodge claimed

constituted the insolence and insubordination, and the quiet manner in which they were spoken, indicate that they were not intended to challenge the authority of Hodge. The long friendship between Hodge and Camy, and the long years of peaceful relations between them, indicate that Hodge could not have regarded Camy's remarks as insolent. We cannot believe that insolence and insubordination were factors in Camy's discharge; firstly, because discharge did not follow until several days after the alleged insolence and insubordination, and secondly, because no mention of insolence and insubordination as a reason for Camy's discharge was made to him at the time he was discharged.

The above considerations throw great doubt upon the sincerity and validity of the reasons advanced by the respondent for the discharges. This doubt, in addition to the following considerations, namely, that the respondent was avowedly hostile to the Brotherhood and all of its members, that the discharges took place at the height of the Brotherhood activity, that the respondent values its operators very highly since each operator represents an investment of $1,500.00 in training and experience, that good operators are hard to find, that it is the respondent's policy to hesitate before discharging an operator, and that in all cases the respondent's officers are instructed to resolve all doubts in favor of the employee, firmly support our conclusion that Sager and Camy were discharged not for any reason associated with the performance of their duties but rather because of their membership in and activities for the Brotherhood. By the discharge of Sager and Camy, the respondent has discriminated against its operators in regard to hire and tenure of employment, thereby discouraging membership in the Brotherhood, and has interfered with, restrained, and coerced its operators in the exercise of the rights guaranteed in Section 7 of the Act.

79 (c) The respondent's domination of and interference with the formation and administration of Drivers' Association, Pacific Greyhound Lines, and its contribution of financial and other support thereto

On August 30, 1933, the respondent conducted an election among its employees on all of its divisions for the purpose of choosing representatives to deal with it. Thereafter the representatives chosen by its operators were invited to meet with the respondent's officers at San Francisco, California. Transportation was provided for these representatives and they met with the respondent without loss of pay. At this meeting Travis addressed them as follows: "Boys, you can do as you please. It is your privilege to form any organization that you wish, or join any organization that you wish; but I believe, for your benefit, that if you have an organization of your own that you can do better, and that it will help you out more than going in some outside organization that don't know anything about the bus business." Responding to this exercise these representatives agreed to form their own labor organization if they could get some help in

drawing up its constitution and by-laws. Travis then informed them that any of the respondent's officers were at their service. Under the guidance of and with the aid of the respondent's officers these representatives immediately drew up a constitution and by-laws governing the new labor organization, Drivers' Association, Pacific Greyhound Lines, and a working agreement between that organization and the respondent. In accordance with the provisions of the constitution and by-laws these representatives automatically assumed control of the Drivers' Association.

Having thus dominated and interfered with the formation of the Drivers' Association, the respondent thereafter dominated and interfered with its administration and fostered its existence by many devices. The record is replete with testimony showing that Travis was as active in promoting membership in the Drivers' Association as were the representatives of the organization. In its efforts to establish the Drivers' Association, the respondent left no stone unturned; operators on the various divisions of its lines were urged, persuaded, threatened, and coerced into joining.

The Drivers' Association, still in existence at the time of the hearing, and functioning under the original constitution and by-laws drawn up in 1933, claims a membership of more than 400. Article I of its constitution and by-laws reads as follows: "This Association is organized by the Drivers of Pacific Greyhound Lines, Inc. for the purpose of providing adequate representation for them in all matters pertaining to their welfare, and for the purpose of fostering a spirit of cooperation between the Drivers and the Company." The managing body of the Drivers' Association, the Board of Governors, is composed of eight representatives, one from each of the respondent's divisions. According to Article IV Section 1 of the constitution and by-laws, only "members in good standing * * * who have to their credit one or more years of active service as a driver for Pacific Greyhound Lines, Inc., and who are American citizens, 21 years of age or over," are eligible to become representatives. Article III, Section 3, provides for the signing of a deduction order by members, authorizing the respondent to deduct membership dues from their salaries. In accordance with this provision of the constitution and by-laws the respondent collects dues for the Drivers' Association and deposits the amounts collected to that organization's account.

The working agreement in effect at the time of the hearing between the Drivers' Association and the respondent consists of the original agreement drawn up in 1933, various amendments thereto also drawn up under the guidance of and with the aid of the respondent's officers, and certain rules and regulations issued by the respondent, interpreting and modifying the provisions of the original agreement and the amendments. Under the terms of this so-called agreement any operator "who considers that an injustice has been done him in any matter" may appeal first to his supervisory officer and then to the president of the respondent, but in "all cases the decision of the president shall be final." Such appeals may only be made personally or through a representative of the Drivers' Associa-

tion. Arbitration is provided for by the working agreement only in cases where the parties disagree as to the proper meaning or application of any provision of the agreement. The provision for arbitration has however never been called into use.

Meetings of the members of the Drivers' Association with their divisional representatives are not regularly called. On some divisions no meetings have been held for over a year; on others, none for a period of months. When meetings are held the individual members of the Drivers' Association have no voice in the determination of any policies. The respondent's officers frequently attend and address these meetings and exert their influence upon the members and representatives attending. Characteristic of these meetings is the meeting called by the Drivers' Association during August or September 1935. At this meeting, called for the purpose of discussing working conditions, Hodge presented a plan proposed by the respondent, the particulars of which it is not necessary to discuss here, but the net effect of which was to favor the respondent's "Guarantee Men" to the detriment of the operators on its "On Call Board." Warren Macy testified at the hearing that there was no need for such a plan at the time it was proposed. The members of the Drivers' Association at the meeting unanimously voiced their disapproval of this plan. When it was suggested that a vote be taken, Hodge arose and informed the members present that "if Mr. Travis wanted it to go that way it would go that way, regardless of all the voting the drivers did at the meeting there." No vote was ever taken on the proposal, but the plan was nevertheless put into effect by the respondent, and was still in effect at the time of the hearing.

The respondent's minor officials attend the meetings of the Drivers' Association and take notes of the proceedings. The respondent supplies the Drivers' Association with secretarial help not only for the purpose of recording the minutes of meetings but for other purposes as well, and permits the Drivers' Association to use its stationery and bulletin boards. Suitable meeting quarters are provided by the respondent for the Drivers' Association in its terminals on its various divisions. Members of the Drivers' Association suffer no loss of pay for time spent at these meetings. Representatives of the Drivers' Association receive their regular pay when attending to the affairs of that organization. The respondent in addition furnishes transportation to the representatives when the affairs of the Drivers' Association make travel necessary. Members of the Drivers' Association, with the knowledge and approval of the respondent, engage in organizing activities during working hours without loss of pay.

The respondent takes an interest in the elections conducted by the Drivers' Association and advises its employees as to who are the best candidates. Just before the Drivers' Association election of December 1935, Fischer, the respondent's agent at Santa Cruz, advised Lee Thompson to vote for one Martin rather than for Wallich, the latter being a Brotherhood man.

It is clear that the respondent prior to July 5, 1935, created the Drivers' Association, fostered its existence and dominated its administration. A review of the findings of fact set forth above leads us to the inescapable conclusion that the respondent has since July 5, 1935, done everything within its power to keep that organization alive and to interfere with and dominate its administration.

The fundamental structures upon which the Drivers' Association depends for its existence, the constitution and by-laws and the so-called working agreement with the respondent, are the creation of the respondent. By these instruments the respondent continues to force its operators to accept the type of representation which it has dictated. Such representation is obviously inadequate. "Outsiders" are not recognized by the respondent. As a result the respondent's operators are compelled to deal with the respondent through representatives admittedly inexperienced in matters of collective
81 bargaining. An example of how this system of representation works in practice, is furnished by the experience of the Los Angeles operators, who, despite all their efforts, have been unable to effect adjustments of long-standing grievances. Although the members and representatives of the Drivers' Association have frequently appealed to the respondent, only minor concessions have been obtained. One of the respondent's officials testified that when the respondent and the men cannot agree on a certain matter, the status quo remains, and the Drivers' Association neither does nor can do anything about it.

The so-called working agreement between the Drivers' Association and the respondent is in effect not an agreement at all. Although it provides that it shall remain in effect for a certain period of time and that it may be changed only by mutual consent of the parties, its terms apparently do not bind the respondent. Witness to this effect are the rules and regulations issued by the respondent from time to time interpreting and modifying various provisions of that instrument; also the plan proposed by the respondent in August or September, 1935, which, although objected to by the members of the Drivers' Association, was put into effect by the respondent over their objections. Furthermore, the provision of the working agreement making the decision of the president of the respondent final in any appeal, concentrates all the power over the destiny of its employees in the respondent's hands.

The presence of the respondent's officers at the meetings of the Drivers' Association, "taking notes of the proceedings" and joining in the discussion of working conditions and proposals for changes in the so-called working agreement, exerts a powerful pressure upon the members and representatives to do as the respondent wills. The respondent's zealous interest in the affairs and the expansion of the Drivers' Association, has made it apparent to the operators that this is the organization which the respondent favors and which it would be wise to join. By gratuitously supplying the Drivers' Association with secretarial help, stationery, and meeting places, by supporting

its members and their representatives while engaged in its affairs by payment to them of their regular wages, and by collecting the dues of the Drivers' Association, the respondent has clearly identified itself with that organization in the eyes of its operators, and has impaired the bargaining power of the Drivers' Association by placing it in the position of a debtor. Under such circumstances the respondent's operators are not free to exercise the rights guaranteed by the Act.

On the basis of the aforementioned facts we conclude that the respondent has interfered with and dominated the formation and administration of the Drivers' Association, has contributed financial and other support thereto, and has thereby interfered with, restrained, and coerced its operators in the exercise of the rights guaranteed in Section 7 of the Act. There can be but one way of remedying the unlawful conduct in this case and, that is by ordering a complete withdrawal of all recognition by the respondent of the Drivers' Association as the representative of its operators, in addition to ordering the cessation of such interference, domination, and support. What we said in In the Matter of Wheeling Steel Corporation and The Amalgamated Association of Iron, Steel and Tin Workers of North America, et al., Case No. C-8, decided May 12, 1936, is particularly applicable here:

"Simply to order the respondent to cease supporting and interfering with the Councils would not set free the employee's impulse to seek the organization which would most effectively represent him. We cannot completely eliminate the force which the respondent's power exerts upon the employees. But the Councils will, if permitted to continue as representatives, provide the respondent with a device by which its power may now be made effective unobtrusively, almost without further action on its part. Even though he would not have freely chosen the Council as an initial proposition, the employee, once having chosen, may by force of a timorous habit, be held firmly to his choice. The employee must be released from these compulsions. Consequently the respondent must affirmatively withdraw recognition from the Departmental and General Councils, as organizations, for the purpose of collective bargaining upon behalf of its employees."

V. Effect of the Unfair Labor Practices on Commerce

The respondent is engaged in the operation of an extensive interstate motor carrier transportation system, which operates as an integral part of a nation-wide system. Its operators, employed on wholly intrastate runs as well as its operators on interstate runs, are engaged in the operation of instrumentalities of interstate commerce.

As we said in In the Matter of Pennsylvania Greyhound Lines, Inc., Case No. C-1, decided December 7, 1936:

"Interference with the activities of employees in forming or joining labor organizations results in strikes and other forms of industrial unrest which in the field of transportation have the effect of

impairing the safety and efficiency of the instrumentalities of such transportation. About 50% of the strikes and lock-outs that occurred in the motor transportation industry from January 1935 to July 1935, inclusive, involving 32,792 employees and 162,721 man-days of idleness, arose over the issue of employee organization. It is common knowledge that in the industrial scene numerous and prolonged strikes have resulted from denial by employers of the rights now guaranteed by Section 7 and from their interference with employees attempting to exercise such rights (1934) 39 Monthly Labor Review No. 1, p. 75, Table 9.' The Board cannot be blind to such knowledge or fail to realize the disruption of commerce that results from such strikes and unrest. The motor transportation industry has achieved an important place in the transportation systems of this country, and it is the desire of Congress to prevent the interference with transportation and the impairment of the safe and efficient operations of its instrumentalities that results from such strikes and unrest. It is significant that, unlike the parallel legislation in the railway field, there are no provisions for collective bargaining and employee freedom of organization and representation in the recent Motor Carrier Act of 1935, imposing federal regulation of interstate motor transportation. The omission was succinctly explained on the floor of the Senate by Senator Wheeler, Chairman of the Committee on Interstate Commerce, on the ground that the Wagner Act then before Congress would cover the field of motor transportation and that therefore such provisions need not be incorporated in the Motor Carrier Act (Cong. Record, 74th Congress, 1st Session, Vol. 79, p. 8687)."

On the basis of all of the aforementioned findings of fact we conclude that: (a) the respondent's operations occur in the course and current of commerce among the several states; and (b) on the basis of experience in the motor carrier transportation and other industries, the respondent's conduct, and each item of such conduct, burdens and obstructs commerce and tends to lead to labor disputes burdening and obstructing commerce and the free flow of commerce, by impairing the efficiency, safety, and operation of instrumentalities of commerce.

Conclusions of law

Upon the basis of the foregoing findings of fact the Board 83 makes the following conclusions of law.

1. The Brotherhood of Locomotive Firemen and Enginemen is a labor organization, within the meaning of Section 2, subdivision (5) of the Act.

2. The Drivers' Association, Pacific Greyhound Lines, is a labor organization, within the meaning of Section 2, subdivision (5) of the Act.

3. By interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act,

the respondent has engaged in and is engaging in unfair labor practices, within the meaning of Section 8, subdivision (1) of the Act.

4. By discriminating in regard to hire and tenure of employment of its operators, thereby discouraging membership in the Brotherhood of Locomotive Enginemen and Firemen, the respondent has engaged in and is engaging in unfair labor practices, within the meaning of Section 8, subdivision (3) of the Act.

5. By dominating and interfering with the formation and administration of Drivers' Association, Pacific Greyhound Lines, and by contributing financial and other support thereto, the respondent has engaged in and is engaging in unfair labor practices, within the meaning of Section 8, subdivision (2) of the Act.

6. The aforesaid unfair labor practices are unfair labor practices affecting commerce, within the meaning of Section 2, subdivisions (6) and (7) of the Act.

Order

On the basis of the findings of fact and conclusions of law, and pursuant to Section 10, subdivision (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondent, Pacific Greyhound Lines, Inc., its officers and agents, shall:

1. Cease and desist:

(a) From discouraging membership in the Brotherhood of Locomotive Enginemen and Firemen, or any other labor organization of its operators, or encouraging membership in the Drivers' Association, Pacific Greyhound Lines, or any other labor organization of its operators, by discriminating against its operators in regard to hire or tenure of employment or any term or condition of employment.

(b) From dominating or interfering with the administration of the Drivers' Association, Pacific Greyhound Lines, or with the formation or administration of any other labor organization of its operators, and from contributing financial or other support to the Drivers' Association, Pacific Greyhound Lines, or any other labor organization of its operators, except that nothing in this paragraph shall prohibit the respondent from permitting its operators to confer with it during working hours without loss of time or pay.

(c) From in any other manner interfering with, restraining, or coercing its operators in the exercise of their rights to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the National Labor Relations Act.

2. Take the following affirmative action, which the Board finds will effectuate the policies of the Act:

(a) Offer to Vincent R. Sager and Henry A. Camy immediate and full reinstatement to their former positions, without prejudice
24 to any rights and privileges previously enjoyed by them.

(b) Make whole Vincent R. Sager and Henry A. Camy, and each of them, for any losses of pay they have suffered by reason of their discharge, by payment to each of them, respectively, of a sum of money equal to that which each of them would normally have earned as wages from the date of his discharge to the date of the respondent's offer of reinstatement, computed at the average weekly earnings of each for six months immediately preceding such discharge, less the amount earned by each since the date of his discharge.

(c) Withdraw all recognition from the Drivers' Association, Pacific Greyhound Lines, as the representative of its operators for the purposes of dealing with the respondent concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work; and completely disestablish the Drivers' Association, Pacific Greyhound lines, as such representative.

(d) Immediately notify each and every one of its officers and agents in each of its divisions as well as each and every one of the representatives of the Drivers' Association, Pacific Greyhound Lines, that the Drivers' Association, Pacific Greyhound Lines, is so disestablished and that it will refrain from any recognition thereof.

(e) Post notices to its operators in conspicuous places in all of its terminals on each of its divisions stating: (1) that the Drivers' Association, Pacific Greyhound Lines, is disestablished as the representative of its operators for the purpose of dealing with it with respect to grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work, and that it will refrain from any recognition thereof; (2) that it will cease and desist in the manner aforesaid; and (3) that such notices will remain posted for a period of at least thirty (30) consecutive days from the date of posting.

Signed at Washington, D. C., this 18th day of December 1936.

[SEAL.] NATIONAL LABOR RELATIONS BOARD.
J. WARREN MADDEN, *Chairman.*
EDWIN S. SMITH, *Member.*
DONALD WAKEFIELD SMITH, *Member.*

1 Before the National Labor Relations Board, Twentieth Region

Case No. XX-C-14 and Case No. XXI-C-15

IN THE MATTER OF PACIFIC GREYHOUND LINES, INC., AND BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN

Statement of evidence

Mr. BOWEN. That is all.

28 C. W. MOWERY, called as a witness by the National Labor Relations Board, being first duly sworn, testified as follows:

By Mr. Shaw:

Q. Mr. Moffitt, to your knowledge, without reading the preamble, what is the purpose of the organization of the Brotherhood?

A. To promote the welfare and interest of our members, create and maintain a better relationship between the carriers and our organization, promote in general safety of train operation, bus operation, that are handled by the members of our organization.

Q. Does the organization engage in collective bargaining with the carriers of this country?

A. Yes, sir.

Q. Do you have agreements with carriers in this country?

A. We have agreements on every interstate railroad in the United States and Canada.

(Tr. 46-62)

Q. Mr. Moffitt, during the fall of 1938 did any group of the drivers of the Pacific Greyhound Lines come to you and talk to you?

A. Yes, sir.

Q. What did they ask you to do?

Mr. Bowen. Let's get the time, place, and persons present.

A. They asked——

By Mr. Shaw:

Q. Excuse me, Mr. Moffitt. When did they call on you, about what date, to be specific?

A. Well, it was quite some time ago. If my memory serves me correctly they first came to the office in July.

Q. In July of 1938?

A. July 1938.

Q. Mr. Moffitt, you said "into [illegible] office." Where is your office located?

A. 361 Pacific Building, Fourth and Market Streets.

Q. Can you name any of those individuals who came in to see you at that time?

A. Well, there were so many of them that I do not know that I can recall very many of them.

Q. Can you name any of them?

A. Yes. Mr. Sager was one; John Wallich; S. B. Smith—numerous others that I couldn't recall their names.

Q. Was there a Mr. Peering that came to see you?

A. Yes, sir.

Q. A Mr. Martin that came to see you?

A. I believe Mr. Martin did come into the office to see me.

Q. Was there a Mr. Berry, from Reno, Nevada, that came in to see you?

A. Yes, sir.

Q. Do you know how he spells his name?

A. I think it is B-e-r-r-y, if I am not mistaken.

Q. What was the purpose of their call on you?

A. They were endeavoring to organize and, as a member of them expressed it, they desired to organize with our Brotherhood or to affiliate with our Brotherhood, expressing themselves that they were engaged in interstate traffic and was desirous of affiliating with a national organization.

Q. Did you have any organizers in the field at that time organizing bus drivers along the Pacific Greyhound Line?

A. No, sir.

Q. Do you know how many of them talked to you about that and expressed their willingness to join?

A. I would say approximately 100 from divisions 4, 5, and 6.

Trial Examiner Woon. I take it this was a group from among the Respondent's employes, is that correct, counsel?

Mr. Shaw. Precisely.

Trial Examiner Woon. Would you mind bringing that out?

By Mr. Shaw:

48 Q. They were employes, drivers employed by the Pacific Greyhound Lines?

A. Yes, sir.

Q. Did you offer to take them in at that time, or what conversation did you engage in?

A. I informed them that I didn't know whether it was the policy of the organization at the time, and I would have to get further information from our chief executive. I was very busy and didn't have time to devote to the handling of their affairs.

They continued to call at the office for a month or six weeks and I wired Mr. D. B. Robertson, International President, and asked his permission to take them in.

Trial Examiner Woon. What do you mean by that—"take them in"?

The Witness. Take them into our organization.

Trial Examiner Woon. You mean issue a charter?

The Witness. No, sir. Under the laws of our organization they can affiliate with the local lodge such as Lodge 91, at San Francisco; 917 at Sausalito; 163 in Oakland, and various other lodges on the system."

50 (Tr. 50):

By Mr. Shaw:

Q. Mr. Moffitt, to your knowledge as an officer of the Brotherhood, does the Brotherhood have any agreement with any other bus companies in the United States?

A. I understand we have three.

Q. Do you know with what railroads these agreements are in effect?

A. I believe I have a record of them. We have agreements with the—on rates of pay and working conditions—New England Transportation Company, subsidiary to the New York, New Haven & Hartford Railroad.

Q. Any others?

A. The Interstate Rapid Transit Company, and one other that I cannot find now.

51 (Tr. 51):

Q. Do you know whether these contracts, these agreements, were arrived at after a process of collective bargaining?

A. Yes, sir.

Q. Do you know whether there was any strike involved in the negotiations leading up to the signing of these contracts?

A. To my knowledge there was no strike involved.

56 (Tr. 56):

By Mr. Bowen:

Q. Do you have membership in your Brotherhood organization that are not railroad men, outside of these three motor coach operators that you named?

A. To join the Brotherhood it is necessary to be in service, either in steam service or in railroad service, or a motor coach operator. Because you terminate your services with a railroad or a motor coach company it wouldn't necessarily require you to terminate your membership in our organization.

57 (Tr. 57-58):

Q. Now, with the ever increasing volume of transportation by motor bus and truck, to the detriment of railroad transportation, what benefits do you seek to give to the motor coach organization by taking them into the Brotherhood?

A. To give them the same protection as we do our members employed on steam or electric railroads.

Q. Well, you refer to the consequent loss of work by railroad employes because of the increase in motor transportation. How did you expect to put a stop to that by taking in motor coach employes?

A. By not—by taking in motor truck operators, but on the lines of fair competition between rails and the highways we expected to better the conditions of both.

Q. Well, the only way in which you could stop a loss of employment in the railroad was to stop the development of

58 motor transportation on the highways, wasn't it?

A. Not necessarily.

Q. Your organization has consistently opposed application for operation on the highway, has it not?

A. No.

59 (Tr. 59-60):

Q. Your organization has appeared in the legislature in the State of California, and in practically all of the legislatures throughout the United States, supporting legislation antagonistic to the development of the motor bus business, have you not?

A. Not to my knowledge. To the best of my knowledge we have, our organization has supported legislation to eliminate unfair competition on the highway as between motor bus companies and motor bus companies and the railroads.

Q. And in this activity that you engaged in relating to legislation, and operations of highway transportation, you have coordinated those efforts with the other Brotherhoods of the railroads, haven't you?

A. In what way?

Q. In cooperating with these other rail Brotherhoods which you mentioned as the Big Four, and the other ones, and consolidating your opposition to the motor bus industry through one legislative committee, for instance, that represents all of these Brotherhoods?

60 A. In so far as unfair competition is concerned; yes.

Q. In so far as legislation relating to the subject is concerned?

A. To my knowledge our organization has neve' been instrumental in introducing any legislation, or supporting any legislation revoking a franchise of a motor bus corporation.

64 Q. Reading the second paragraph there, would you say that your organization has a different attitude toward the granting of certificates to operate bus and truck lines as Mr. See's organization?

A. In the second paragraph I would say yes, Mr. Bowen.

Q. That is, you would not oppose an application then by a highway carrier for a certificate to operate on the highway in competition to railroads?

A. Operating a parallel line, to a line of railroad, yes, for this reason.

Q. You mean that you would oppose such application?

A. We would oppose granting a new franchise to a bus or truck corporation.

Trial Examiner Woop. Where it was the matter of a parallel line, I take it?

The Witness. Yes, a paralleling line.

69 Q. Mr. Moffitt, do I understand that your constitution, which is Exhibit 15, and which apparently was revised at the 32d Convention June 9, 1931, has been amended so as to permit the induction into your membership of bus drivers—has the constitution been amended to provide for them?

A. Yes, sir.

Q. Have you a copy of that?

A. I am not sure, but I think it is in that constitution, Mr. Bowen.

Q. Possibly you are more familiar with it than I am. Will you turn to it?

Trial Examiner Woop. Off the record.

(Whereupon followed informal remarks off the record.)

By Mr. Bowen:

Q. The reason I make that inquiry as to the amendments, Mr. Moffitt, is because of the restrictive provision of your constitution

on page 178, relative to the qualification of applicants, which states:

70 "An applicant for membership shall have served at least 30 days as a locomotive firtman, engineman, engine hostlers."

Now, what I am interested in is getting the revision of your constitution.

A. It was convention action, Mr. Bowen. I was present at the convention.

Trial Examiner Woco. May I ask counsel for the Board, or Union representatives present here, whether they can furnish Mr. Bowen with a copy of the resolution, or amendment, whatever it was, that will show what it was that Mr. Bowen would like to have put in the record?

Mr. Shaw. Board's Exhibit 16, Mr. Examiner, is a direct copy of the resolution.

74 (Tr. 74):

Q. What I am trying to bring out, Mr. Moffitt,—I will state to you frankly—is that the organization which you represent is an organization that has a direct competitive fight with highway transportation from a competitive standpoint?

A. Only in so far as unfair competition is concerned, Mr. Bowen.

79 (Tr. 79):

Q. Your organization would not permit the issuance of a charter solely to bus employes; would it?

A. Yes, sir.

Q. Under what provision?

A. Through the resolution adopted by the convention.

Q. That is in connection with this same Exhibit 16?

A. Yes, sir.

81 (Tr. 81-82):

Redirect Examination by Mr. Shaw:

Q. Mr. Moffitt, I am reading from page 1915 of Moody's Manual of Investments, which is Board's Exhibit No. 2, and I find the Board of Directors of the Pacific Greyhound Lines, Inc.—I am reading to you three of the members of the Board of Directors: C. R. Harding, Vice-President, San Francisco; C. E. Wickman, Vice-President—no, strike Wickman; C. J. McDonald and W. A. Worthington. Those are three of the nine Board of Directors. Do you know as a matter of fact whether those men are officers of the Southern Pacific Company—Mr. Harding, Mr. McDonald, and Mr. Worthington?

A. Well, I couldn't say positively, but there is a Mr. McDonald who is President of the Southern Pacific, Pacific Lines.

Q. Do you know Mr. Harding?

A. No; I do not.

Q. Do you know the standard engineer of the Southern Pacific; who he is?

A. The System engineer is Mr. Ellerbrok.

Q. Do you know Mr. Worthington?

A. Who?

Q. Mr. Worthington.

A. No; I couldn't say that I do.

Q. Do you know who the Assistant General Manager of the Southern Pacific Lines is?

A. Assistant General Manager—there are several of them.

Mr. Bowen. I am informed that these gentlemen whose names you read are officers of the Southern Pacific Company, with the exception of Mr. McDonald, who is Superintendent of Mails, as I understand.

(Tr. 32):

By Mr. Shaw:

Q. I am reading also from page 1815 of Board's Exhibit No. 2, from Moody's, the paragraph called "Control":

"The company is controlled by the Pacific Greyhound Corporation, formerly Pacific Transportation Securities, Inc., the common stock of which is owned by Greyhound Corporation, Southern Pacific Company and others."

To your knowledge is that correct, Mr. Moffitt?

A. Yes.

(Tr. 33-34):

Q. Mr. Moffitt, Mr. Bowen brought out several questions here showing the legislative activity of the Brotherhood of Locomotive Firemen and Enginemen. Were you ever called upon by any railroad to oppose the issuance of a franchise to a bus line?

A. During the latter part of April, or the first of May, 1936, I was called in to Superintendent Hack's office in Sacramento.

Q. Who is Superintendent Hack?

A. He is the superintendent of the Sacramento Division of the Southern Pacific Lines. In fact, all of the local chairmen from Sacramento and Roseville, representing the four transportation brotherhoods, were called in and asked to be in readiness to cooperate with the Southern Pacific officials in an endeavor to stop the Santa Fe from obtaining a franchise from San Francisco south, I believe, to San Diego.

Trial examiner Woon. That is a railroad franchise?

The Witness. The Santa Fe has like.

Trial Examiner Woon. I am not familiar with it.

By Mr. Shaw:

Q. Mr. Moffitt, at that meeting were you shown a copy of a telegram, or the original of a telegram?

A. A telegram was read by Mr. Hack from Mr. McDonald, I think it was A. B. McDonald, President of the Southern Pacific property, requesting that such meeting be held between the operating officials of the Southern Pacific and the organization representatives, in which they asked the cooperation of the organizations to prevent

the Santa Fe bus lines; or the Santa Fe Railroad Company, from securing a franchise.

Q. Did the telegram say why you were to prevent the Santa Fe from securing a franchise?

A. If my memory serves me correctly, it stated it would take business away from the Pacific Greyhound bus line, which was a subsidiary of the Southern Pacific Railroad Company.

(Tr. 85-86);

CROSS-EXAMINATION

Q. This work which you stated you were called in to do opposing the application of the Santa Fe for a bus certificate in the State of California was in line with the policy of your Brotherhood to protect its rail employees by opposition of the development of new highway carriers, was it not?

A. In this particular case, Mr. Bowen, I presume it was to protect the revenue derived from the Pacific Greyhound Lines.

(Tr. 87-89);

Q. And the purpose of that was to protect the revenues of the Southern Pacific as a whole against the encroachment by the Santa Fe Railroad?

A. That wasn't the way it was explained to the committee of local chairmen.

Q. Would you be interested, from that standpoint, as representing the Southern Pacific rail employes, or would you represent both Santa Fe rail employes and the Southern Pacific Railroad employes under such circumstances?

A. We are interested, Mr. Bowen, in protecting the interests of the Southern Pacific employes, including the Pacific Greyhound Lines, and also the Southern Pacific as far as we could do so, without interfering with other railroads that contract with our organization governing firemen and enginemen or bus drivers.

Q. The point I was trying to reach, in your capacity as representing the lodge that you do represent, you would take sides with the Southern Pacific as against the Santa Fe on any conflicting interests there, would you not?

A. We did not take sides.

Q. I say, you would if such a conflict arose?

A. No; we would not. We would be absolutely neutral.

(Tr. 90-91);

By Mr. Bowen:

Q. Well, then, in that context, Mr. Maffe, you would have no interest from the standpoint of your organization protecting the interests of the Greyhound bus drivers whose jobs might be jeopardized by an entry of a new competitor in a field where there were members of your organization?

A. The policy of the organization, where there are two branches of the organization, or two railroads, I might say, who have employed members of our organization, is to be neutral in such cases because we could not take sides with one set of employes and go against the other.

93 *Motion to dismiss*

Mr. Bowen. I desire to make a motion, before proceeding. I desire at this time to move that the complaint herein be dismissed on the ground that it is not based upon the charge by an organization of which the National Labor Relations Board is cognizable of or has jurisdiction over.

95 *Testimony of Les Thompson*

Q. Were you ever an employe of the Pacific Greyhound Lines?
A. Yes, sir.
Q. How long were you an employe of those lines?
A. About five days short of four years.
Q. Do you recall what period?
A. From May 1, 1932, until April 23, 1936.
Q. You are not now employe of theirs?
A. No.
Q. Did you quit or were you discharged?
A. Discharged.
96 Q. Were you a member of the Brotherhood of Locomotive Firemen and Enginemen?
A. Yes, sir.
Q. How long were you a member of that organization?
A. I don't recall the day I went in.
Q. About when, Mr. Thompson?
A. I think about eight months.
Q. About eight months ago you joined?
A. Yes, sir.
Q. Would you say around October 1935 you joined?
A. Yes.
Q. Were you an officer in the organization?
A. No.
Q. Were you active in the soliciting of members for the organization?
A. Yes; I helped some of the boys sign up their applications.
Q. Were you a driver?
A. Yes.
Q. Where did you drive between?
A. From Santa Cruz to Davenport and Watsonville Junction.
Q. You signed up, helped sign up some of the boys. You signed other drivers of the Pacific Greyhound Lines?
A. Yes.

Mr. SHAW. For the record at this time I want to state that Mr. Thompson, while he claims he was discharged for union activities as an employe, is not a part of his complaint, because he does not wish to return to work with the Pacific Greyhound Lines and he is here to testify on collateral matters and having to do with Mr. Sager's case. I want that remark made for the record.

By Mr. SHAW:

Q. Did you know Mr. Sager?

A. Yes, sir.

Q. Was he also active in the organization of the Brotherhood?

A. Yes.

Q. Was he one of the drivers of the Pacific Greyhound Lines?

A. Yes, sir.

Q. Had you been with him on some of these solicitation ventures of yours?

A. Yes.

Q. Had you been pretty active, both of you?

A. Well, yes.

Q. Who were the leaders in the fall of 1935 in the solicitation of members for the Brotherhood among the drivers? You were one, I take it, and what others?

A. Mr. Sager.

Q. Mr. Sager?

A. Yes.

Q. Was Mr. Sager the one person who was most active to your knowledge among the drivers?

A. Yes.

98 Q. Mr. Thompson, do you know Mr. Krug?

A. Yes, sir.

Q. Who is he?

A. Superintendent of the Pacific Greyhound.

Q. Was he your superior?

A. Yes, sir.

Q. By superintendent do you mean he had charge of one of the divisions?

A. Yes.

Q. Where are his headquarters?

A. San Francisco.

Q. How far is that from Santa Cruz?

A. 80 miles.

Q. Do you know what Division 4 consists of, what part of the System?

A. No; I really don't.

Q. He is head of Division 4?

A. Yes, sir.

Q. It goes to the south, I take it, as Santa Cruz, is that right?

A. It goes further south than that, but I don't know how far.

Q. Does it go as far as San Luis Obispo?

A. I believe it does.

Q. Do you remember having a conversation with Mr. Krug on about November 12, 1935?

A. Yes, sir.

Q. Will you describe how you came to have that conversation with Mr. Krug?

A. Well, it was over some—it started by Mr. Krug asking me why I was dissatisfied.

Q. Where was this conversation?

A. It was in the bus.

Q. Where?

A. In the depot at Santa Cruz.

Q. He asked why you were discharged?

A. Yes, sir.

Q. What did you say?

A. I told him I was dissatisfied over the demerits I had received.

Q. What did he then say?

A. Well, he says, "You belong to this Brotherhood, don't you?"

Q. What was your answer?

A. I told him I did.

Q. Then what did he say?

A. Well, he says, "It is damnable disloyal."

Q. Did he say anything else?

A. And he told me, if I felt that way the best thing I could do was to get out.

Q. Did he say anything about discharging you?

A. No, he didn't; but he really insisted that I get out of the organization.

Trial Examiner Woon. Meaning the company?

The WITNESS. Yes.

By Mr. SHAW:

Q. Get out of what organization, the company?

A. Yes, sir.

Q. Did he make any mention about finding something wrong with your work over which he discharge you?

A. No, he didn't.

Q. Did he say anything of that nature?

A. I remember telling him at that time that if he had anything on me to fire me.

Q. What did he say?

A. Well, he mentioned that I had been listening to Dick Sager.

Q. Did he say anything about Sager?

A. Well, he said Dick Sager was spreading damnable lies about Mr. Martin.

Q. Who is Mr. Martin?

A. He was president of the Drivers' Association.

Q. Did he say anything about you being on a list of men he had marked?

A. He told me it was just too bad for me. He told me that I was one of ten.

101 Q. Did he tell you you had better look out?

A. No, he just told me it was too bad for me. He said, "I am telling you, Thompson, it is just too bad for you."

Q. You said you were discharged. On what day were you discharged?

A. April 23.

Trial Examiner Wood. This year?

The Witness. This year.

By Mr. Shaw:

Q. Did the company explain why they discharged you?

A. They sent down some three, what looked like coupons.

Q. Three what?

A. Coupons, or something from the State. I believe it was the State employment—I don't know what it was, but I was forced to sign them. I don't know what it did say on them.

Q. Do you mean slips?

A. Three slips.

Q. That were sent to the State Unemployment Insurance office?

A. I think there was a blue slip, a yellow, and a pink one.

Trial Examiner Wood. You mean sent to or received from or what?

Mr. Shaw. For the purpose of the record I think counsel

102 will agree that under the law of the State of California the State Social Securities Law and the Unemployment Insurance Law an employe is required, when he is discharged, to sign his name to a slip. The law makes different provisions for men who are discharged from men who leave the service of their own will, or men who are laid off, because of the general unemployment situation.

Trial Examiner Wood. These are signed in triplicate, are they?

Mr. Shaw. Frankly, I have never seen any of the slips. I have been told about them. I do not know whether they are supposed to sign them in triplicate or not, but that is the general nature of the thing he is referring to.

(Tr. 103–107):

By Mr. Shaw:

Q. On those slips, Mr. Thompson, was there anything said about why you were being discharged?

A. Being incapable of handling the equipment.

Q. What did that mean to you?

A. What did it mean to me?

Q. Yes. What happened in the past few days that you had been criticised, or what had you done?

A. I hadn't had any wrecks.

Q. You had had no wrecks?

A. No.

Q. What had you done?

A. Just refused to break in on all of the runs out of the
103 depot, or on the San Francisco runs.

Q. Will you explain why you refused to break in?

A. Because when the run sheet was put up, posted, it wasn't on the run sheet.

Q. It is not quite clear to us, Mr. Thompson, what you mean by "run sheet." Let me ask you this question, hoping to clarify it: As I understand it, you bid for your runs; is that correct?

A. Yes, sir.

Q. And the run includes only those things you bid for; is that correct?

A. Yes, sir.

Q. And the company was trying to impose other work on you?

A. Yes, sir.

Q. And you refused to do it?

A. Yes, sir.

Trial Examiner Wood. What does the term "break in" mean?

The Witness. Get yourself acquainted with that run.

By Mr. Shaw:

Q. Had you worked the day that you were asked to take this extra run?

A. Yes.

Q. How many hours had you worked that day?

A. I started to work at 6:35 in the morning.

Q. When did you quit?

104 A. That evening my run finished at 4:50.

Q. And you were asked to take out another bus that evening?

A. No; I wasn't asked to; I was asked to break in on all [illegible]co runs.

Q. You were supposed to start that evening?

A. He didn't say.

Q. Why did you refuse, Mr. Thompson?

A. For the simple reason it wasn't on the run sheet.

Q. It wasn't what you bargained for; is that right?

A. Yes, sir.

Q. Is it customary that men who have bargained for a particular run to do only that run and nothing else? Was that your understanding of your employment?

A. Yes, sir.

Q. Did you get paid when you quit there, get your pay check?

A. I did, but they took about three days to give it to me.

Q. Will you tell us the events that led up to getting your pay check?

A. Well, I tried to get my pay check and they were afraid to leave it in the office. They packed it around there and I finally contacted it after about three days when I met the agent, Mr. Faulkner, in a beer joint.

Trial Examiner Woon. What is the purpose of this, Mr. Shaw?

105 Mr. Shaw. I want to show the events leading up to this. I am not interested in the check itself. If you will let the witness explain I think the purpose of the question will come out.

Trial Examiner Woon. Very well.

A. I wanted the check—in fact I had to have it—and he wouldn't give it to me unless I sent in my resignation.

Then he showed me a letter, a confidential letter to Mr. Fancher, the agent, saying not to give driver Thompson his check unless he sent in his resignation. But further on it stated that if driver Thompson refused to do that, but would send in his resignation at a later date, or so, to give him his check.

Q. Who signed the letter?

A. Mr. J. W. Krug.

Q. Was it on Greyhound stationary?

A. Yes, sir.

Q. Go ahead; I stopped you.

A. Then the agent told me that he would give me my check. I told him I would go to the District Attorney after that if he didn't give it to me. So he said he would give it to me, but in order to clear himself he said that he would have to write a letter in to Mr. J. W. Krug telling him that I would send in my resignation at a later date. Then he gave me the check.

106 Q. At the time that he gave you the check did he say anything to you about why you were discharged?

A. He said, "Lee, I know this has nothing to do with your work. Your work has been fine but," he says, "it is the Brotherhood."

Trial Examiner Woon. Who was it stated that?

Mr. Shaw. I intend going into that.

By Mr. Shaw:

Q. Who was Mr. Fancher?

A. He was the Pacific Greyhound agent at Santa Cruz.

Q. As such agent he also had the business of dispatching under his charge, didn't he?

A. Yes.

Q. He was your immediate superior, was he?

A. Yes.

Q. Would you say he was in the position of being a foreman, or something of that sort?

A. Yes, sir.

Q. He could take you off one run and put you on another run?

A. Yes, sir.

Q. It was he, was it not, who ordered you to take the San Francisco run?

A. Yes.

Q. And for refusing to take that run you were discharged?

Q. Mr. Thompson, were you a member of the Drivers'
107. Association?

A. Yes.

Q. When did you join?

A. I don't remember the date, but when it first started.

Q. How did you come to join?

A. I don't remember, but it was at the time the cards were being passed around, or applications.

Q. And you just signed one of them?

A. Yes, sir.

Q. Do you remember, Mr. Thompson, whether you had an election last December or not in the Drivers' Association?

A. Yes, sir.

Q. Did you vote in that election?

A. Yes, sir.

Q. Did you talk to Mr. Fancher about that election at that time?

A. Yes, sir.

Q. What did he tell you?

A. Well, he told me—I mentioned, I says, "Who shall I vote for?" We were just talking about it and he said. "By all means vote for Gussie Martin."

Then I said, "What about Jake Wallich?"

Q. What did he say to that?

A. He said, "For your own good vote for Mr. Martin, as Mr. Wallich was a radical."

111 (Tr. 111).

CROSS-EXAMINATION

Q. And do you know whether anybody in the Greyhound knew that you belonged to the Brotherhood?

A. Yes.

Q. Had you told them?

A. I told Mr. Krug.

Q. Well, when did you tell him that?

A. In the course of our conversation over demerits one day.

Q. That was prior to the time that they endeavored to get you to take this San Francisco run?

A. Yes.

118 (Tr. 113–115):

Q. What was the subject of that conversation?

A. I told him that I didn't believe I could handle the run over the hill, but I could handle the S. P. stuff. And Mr. Fancher, the agent there at that time, also talked to Mr. Krug and as I understand, they agreed it was O. K. that I could handle the—I should told me I could protect in the S. P. runs instead of those over the hill.

Trial Examiner Woon. What does the word "protect" mean? You have now used it twice.

The WITNESS. It means to take care of an overload, schedule
114 or second section, or third section or whatever it might be.

Trial Examiner WOOD. Does it mean to run extra?

The WITNESS. Yes.

Trial Examiner WOOD. Does that mean to run extra after you have had a normal day's work?

The WITNESS. Yes.

Trial Examiner WOOD. Prior to running extra?

The WITNESS. Yes, sir.

By Mr. BOWEN:

Q. You do not mean, Mr. Thompson, that that means putting in excessive hours beyond the law, do you?

Trial Examiner WOOD. That wasn't what I intended to bring out. I was getting the explanation.

Mr. BOWEN. I think the answer leaves that impression.

The WITNESS. In other words, if I protected on a San Francisco run, after doing my day's work in Santa Cruz, between Santa Cruz and Davenport, and protected on into Frisco that night, that meant I would still—in other words, I would have to protect into San Francisco and get back in time to pull my run again in the morning.

By Mr. BOWEN:

Q. But that wouldn't be working so-called excess hours beyond the limit at which you are required to work, would it?

A. It would take from about 6 o'clock until morning if I went into San Francisco. I get done with work at 4:50 and
115 if I go into San Francisco it would be around 6 or 6:20 and I would get back sometime in the early hours of the morning.

116 (Tr. 116):

Redirect examination by Mr. SHAW:

Q. Mr. Thompson, in order to clear up this point with the protecting, I want to ask you whether the San Francisco run involved a new job or whether it involved merely protecting on the San Francisco run as you have explained it?

A. Just protecting.

Q. Just protecting?

A. Yes.

Q. Therefore, the San Francisco run was not a better job than the run you had, was it?

A. Well, I don't know anything about that because I have never been on any other runs than those around Santa Cruz County.

Q. Well, Mr. Thompson, you didn't have enough seniority to be permanently on the San Francisco run, did you?

A. I don't believe so.

Q. So the only way you could have been on the San Francisco run would have been as an extra man protecting?

A. Yes, sir.

Q. And that would have involved work, protecting would have involved work which took you from 6 o'clock in the morning until about 1 or 2 o'clock the next morning?

A. Yes, sir.

117 (Tr. 117-118):

Examination by Trial Examiner Woon:

Q. How did you happen to tell Krug that you were a member of the Brotherhood?

118 A. It was during a discussion over demerits that I had received.

Q. What was the object in telling him you were a member? How did that come up?

A. Well, he mentioned, he says, "Well," he says, "you are one of the Brotherhood fellows, aren't you?" And I said, "Yes, I were."

Q. Did any of the supervisors there at your terminal express hostility on any other occasion, or on any occasion to you in reference to the Brotherhood and membership in the Brotherhood?

A. Yes, sir.

Q. What was that occasion?

A. Mr. Fancher admitted on several occasions that he wanted all the—he was out to get all the dope on the boys, the drivers that belongs to the Brotherhood that he could get.

122 *Testimony of Vincent R. Sager*

Q. Are you a member of the Brotherhood of Locomotive Firemen and Enginemen?

A. Yes, sir.

Q. How long have you been a member?

A. Since September 1933.

Q. Have you been an employe of the Pacific Greyhound Lines?

A. I have.

Q. How long have you been such an employe?

A. Since December 1, 1928.

Q. And when did this employment cease?

A. On March 18, 1936.

Q. Did you quit or were you discharged?

A. Discharged.

Q. Are you the same person as is named in the complaint in this case?

A. I am.

Q. Have you had any work since you have been discharged?

128 A. Sir?

Q. Have you had any work since you have been discharged?

A. None at all.

Q. You have been unemployed?

A. Yes, sir.

Q. Have you been on relief?

A. No; I have not.

Q. How much money did you make when you were last working for the company?

A. $7.87 a day.

Q. And you have made how much money since your discharge to the present day?

A. None at all.

(Tr. 129):

Q. Mr. Sager, I hand you what purports to be an authorization certificate purporting to authorize the Brotherhood of Locomotive Firemen and Enginemen to act as a representative in collective bargaining with the Pacific Greyhound Lines, and I ask that this be marked Board's Exhibit No. 19 for identification, and ask you whether you have seen such a document?

(The document referred to was marked "Board's Exhibit 19 for identification.")

A. I have.

* * * * * * *

By Mr. Shaw:

Q. To your knowledge were a number of these signed by the drivers of the Greyhound Lines?

A. Yes, sir.

Q. You don't know how many were signed, do you?

A. At that time the greatest amount ever signed was 264.

Q. Out of how many drivers, do you know?

A. Out of approximately 400 or 450 drivers.

Mr. Bowne. You are still talking about 1946?

The Witness. Yes, sir.

By Mr. Shaw:

Q. This was in the fall of 1946?

A. Yes, sir.

Q. On or about September 15, 1946, were you called to a meeting held in the terminal of the Pacific Greyhound Lines at San Francisco?

A. I attended a meeting following——

Q. Will you finish your answer?

A. I attended a meeting following the posting of a bulletin.

Q. Where was that bulletin posted?

A. On the bulletin board.

Q. What bulletin board?

A. The company bulletin board for general reference for drivers.

Q. In what location?

A. The San Francisco Terminal.

Q. What did the bulletin say?

A. It stated there would be a meeting held to present the drivers' agreement and by-laws for their approval.

Q. Did you go to the meeting?

A. I attended the meeting.
Q. Who was present at the meeting?
A. A. F. Martin, company union representative, and Mr. Dudgens, who works in the capacity of an auditor in the San Francisco Terminal.
Q. He is not a driver?
A. No, sir.
Q. What time was the meeting held?
A. Approximately 8 p. m.
Q. What went on at that meeting, Mr. Sager?
A. Well, we were notified by a representative that the meeting was called for presenting a proposed by-laws, constitution and by-laws, and working agreement to the men. Those two documents were read by Mr. Dudgens to the men present, about 23 in number.
Q. 23 men were present?
A. Right.
135 (Tr. 135–136):
Q. After the document, which has been received as Board's Exhibit No. 20, was read to you that night, on September 15, what else happened at that meeting?
A. There was a general discussion among the men, an open floor discussion.
Q. What was the discussion about?
A. As to whether we would accept that organization, or a bona fide labor organization, and at which time I presented what the Brotherhood had to offer.
At the conclusion of the floor discussion we attempted
136 to take a ballot, which Mr. Martin tried to stop, but the ballot was taken.
Q. What was the score?
A. 22 to nothing against the company union and in favor of the Brotherhood.
137 (Tr. 137–142):
Q. You have mentioned a meeting on September 27, 1938. Where was that meeting held?
A. In the San Francisco Terminal, 8th and Mission Streets, San Francisco, Pacific Greyhound Lines Terminal.
Q. Did you go to that meeting?
A. I did.
138 Q. How did you come to attend?
A. A bulletin was posted on the board.
Q. Was the bulletin signed by anybody?
A. As I recall, it was signed by the representative.
Q. By the representative?
A. Yes, sir.
Q. Who were present at that meeting?
A. Mr. Martin, Mr. Dudgens, and later Mr. Travis.
Q. Who is Mr. Travis?

A. President of the Pacific Greyhound Lines.
Q. The president?
A. Yes.
Q. Was Mr. Travis there at the beginning of the meeting?
A. He was not.
Q. How did he come to be there?
A. He was invited there by the representative.
Trial Examiner Woon. You mean the representative of the Employes Association?
The Witness. Yes. A driver in the back of the room was asked to go and ask Mr. Travis to the meeting.

By Mr. Shaw:

Q. How long after he was invited was it that he came?
A. Three or four minutes; maybe five minutes.
Q. Has he an office in that building?
A. No.
Q. Where?
A. No. 9 Main Street.
Q. How far away is that from the terminal?
A. I would say a little over a mile.
Q. He couldn't have gotten from there to his office in three or four minutes?
A. Hardly possible; no.
Q. What time was this?
A. I would say it took place between 9 and 10 o'clock.
Q. Is it Mr. Travis' custom to be at the terminal at that time?
A. That was the first occasion I had ever seen Mr. Travis at the terminal.
Q. As he came into the meeting what did he say?
A. Well, he addressed the boys, telling them he realized there was a misunderstanding between the men in regard to organization and he assured them at the start of the conversation that they were entitled to join any organization they might see fit, but he didn't think they were right in affiliating with a railroad organization; that he thought the boys ought to go along with him in a company union. Following that I took the floor and asked Mr. Travis a few questions.
Q. What did you ask him?
A. I asked Mr. Travis to cite an instance of where a company union was ever a success.
Q. What did Mr. Travis answer?
A. He stated he couldn't reply to that effect.

* * * * * * *

A. Following that we had an open discussion on the floor.
Q. Was Mr. Travis present?
A. No; that was after he left the room. We made an attempt to bring it to a ballot and we were again blocked by Mr. Martin, who attempted to block us. We finally won the argu-

ment and the ballot was cast and the result of it was 26 drivers in favor of the Brotherhood and one for the company union.

Q. What did you do after that meeting?

A. We offered a suggestion—I, for one, offered a suggestion that we go and talk to Mr. Moffitt, in the Brotherhood office in the Pacific Building. It was generally concurred in and we went over there.

After we got there we listened to Mr. Moffitt's side of the story, in comparison to what Mr. Travis had to offer us in the form of a company union. As a result the men present signed up.

Q. Did all men sign?

A. Some were already members; others were not and did sign.

Q. Every man signed up?

A. Yes, sir.

Q. You say "signed up." You mean they signed Board's Exhibit No. 20?

A. No; the regular Brotherhood application for membership.

Q. Mr. Sager, in all the years that you had worked for the Pacific Greyhound Lines, or its predecessors, had there ever been an employes' organization?

A. None prior to the inauguration of the Employes' Association.

142 Q. That occurred approximately at the same time as the Brotherhood activity, didn't it?

A. Just following that.

Q. Board's Exhibit No. 21 is a memorandum of understanding approved September 23, 1933, between the company and the Employes' Association, apparently representatives of the Employes' Association. Was there an election of such representatives prior to September 23, 1933?

A. Yes; the representatives were elected before any men became members of the Employes' Association.

Q. There were no members in the Employes' Association prior to that?

A. No, sir. The application blanks were not circulated until after those representatives had been elected.

Q. When were they elected, what kind of representatives were they, and what were they supposed to do?

A. They were supposed to represent the men in the form of collective bargaining.

Q. Mr. Sager, I hand you Board's Exhibit No. 28—, for identification, which purports to be a bulletin from the office of the President of the Pacific Greyhound Lines, dated August 17, 1936, and ask you whether you have seen the document, and under what conditions you have seen it.

A. (Examining bulletin.) I recognize the document.

Mr. Shaw. Respondent has a copy of it.

143 By Mr. Shaw:

Q. Under what circumstances, conditions, did you see the document, Mr. Sager?

A. I saw this on the bulletin board and again in the Brotherhood office at a later date.

Q. You saw this on what bulletin board?

A. The company bulletin board in the San Francisco Terminal.

Mr. Shaw, I offer Board's Exhibit No. 22-a in evidence.

Mr. Bowyer. So as to enter a statement on the record, I object to that as incompetent, irrelevant, and immaterial, still dating back to 1938.

Trial Examiner Woon. Objection overruled. Board's Exhibit No. 22-a is received in evidence.

(The bulletin referred to was received in evidence and marked "Board's Exhibit No. 22-a, Witness Sager.")

By Mr. Shaw:

Q. I am reading from Board's Exhibit 22-a, Mr. Sager. The exhibit starts off by reading:

"All employes: A petition requesting that an election be held for the purpose of electing representatives to confer with the management on matters affecting their welfare has been received from the employes."

Did you know of any such petition?

A. I knew of one, but never had the occasion to see it.

Q. You never signed it?

A. No, sir; I was never asked to sign it.

149 (Tr. 149-155):

Q. Mr. Sager, you had just testified yesterday to the meeting held on the evening of September 27, 1938, in the Terminal in San Francisco. Will you tell us what happened the next day, September 28, 1938?

A. I happened to be passing through the depot, approximately at four o'clock in the afternoon, and Mr. Krug advised me that Mr. Travis wished to see me.

Q. Who is Mr. Travis?

A. The President of the Pacific Greyhound Lines.

Q. President.

A. And Mr. Krug told me to go to the office building of Mr. Travis. That was at approximately 4:30 p. m.

Q. Is the office of Mr. Travis in the Terminal where you talked to Mr. Krug, or where is it?

A. It is at number 2 Main Street.

Q. He does not have his office in the Terminal?

A. No, sir.

Q. How did Mr. Krug take you to Mr. Travis' office?

A. In his car, sir.

Q. Go ahead.

A. I obtained an audience with Mr. Travis at approximately 4:45, and upon entering Mr. Travis' office his opening remark was, "You are Sager?"

I replied I was.

Then he said, "I understand that you took 27 men over to the Brotherhood office at the close of the meeting last evening and signed them up."

I replied that I had; that I thought it was my rights within the law to do so.

Mr. Travis then asked me why I was so antagonistic toward the company.

I replied that it was due to the rotten working conditions in general all over the system, and the imposition of petty penalties that were imposed upon the drivers; that we had no security for our jobs and that we worked only from one day until the next; that I had been penalized on one occasion that was thoroughly unjustified due to the fact that that penalty was imposed after a bonus system had been inaugurated, and during the month of November 1932, 1931, or 1932—I wouldn't be positive on the date—and at the time the bonus system was inaugurated all drivers would have had a clear record beginning from that date.

Mr. Bowen. (interrupting.) Just a minute. Is it understood that all testimony relating back to 1932 is taken under the general objection?

Trial Examiner Woon. So understood.

Mr. Bowen. All right; proceed.

Trial Examiner Woon. I would like also for the witness to make clear what part of this background and history you are giving us now was discussed at this conversation with Travis, so it may be clear.

The Witness. I will, Mr. Examiner.

I was called to the office in reference to this bonus situation, which I informed Mr. Travis of, some ten months after the event for which I was penalized, and that was approximately four months after the bonus went into effect.

By Mr. Shaw:

Q. Did you tell Mr. Travis this at that time?

A. I did.

And Mr. Travis' reply to that statement was that he knew nothing of the situation as he had only been in office of a recent date; did not know the policy that was being conducted.

My reply to that statement was that he had been a member of the Board of Directors for the Greyhound Corporation during that period and certainly knew the policies of these various organizations included therein.

Mr. Travis asked me if I had read a letter in reference to the attitude of one of these brotherhoods that had been in circulation.

I replied that I had not.

Whereupon he read excerpts from the letter which he had in his possession. He asked me if I thought it was a national movement.

I told him that I felt that it was, at least, the intention to conduct a national movement throughout the United States.

He informed me that he had wired the eastern members of the Corporation and they had informed him that no such action or trouble was being had on the other Greyhound Lines, and that in event of any future trouble, should it arise on the Pacific Greyhound Lines they had informed him that there were 250 men available for him.

I asked Mr. Travis if he anticipated a strike. He said he did not.

I informed him at the time that it was not the intent or purpose of the men to call any strike to settle their grievances; that we decided to do so on a peaceful basis.

Mr. Travis then stated that he would prefer to select any organization, except one of the Railroad Brotherhoods, as representatives of the drivers.

I told Mr. Travis that we still preferred the Brotherhood of Locomotive Firemen and Enginemen to that of an organization that had to first resort to strike to obtain their settlements.

Mr. Travis stated that he would prefer to deal with a striking organization, rather than deal with an organization that had the set-up to handle matters without first resorting to strike.

Mr. Travis then prevailed upon me to try and see his side
153 of the story, and asked me if I wouldn't go out and talk to the boys with reference to the company union.

I told Mr. Travis that I would go out and present his side of the argument, but I would not endorse it, and I would abide by the decision of the men that I contacted, and I did so.

Mr. Travis then stated, toward the close of the argument, that if I could go along with him and help put this company union across, and see it his way, perhaps at some future date he could do something for me that wouldn't be an insult to my integrity.

That just above closed the interview with Mr. Travis.

Q. Did Mr. Travis, in that interview, say anything about whether or not it would have been advisable to ask you to foster the company union at some earlier date?

A. Yes; he did.

Q. What did he say?

A. Mr. Travis made this statement: "It is very plain to me, if I had solicited you to assist in the formation of this company union before the Brotherhood secured your services, it is very evident that we wouldn't have the trouble that we are having now."

I replied to Mr. Travis that my assistance had not been solicited by any organization and that what I was doing I was doing of my own free will.

155 (Tr. 155-156):

Q. Did you know Mr. L. D. Jones?

A. I do.

Q. Who is he?

A. General Manager of the Pacific Greyhound Lines.

Q. Was he General Manager on September 30, 1933?

A. Yes, sir.

Q. Do you recall having been called into his office about that time?

A. I do, sir.

Q. Will you state your conversation at that time?

A. Mr. Jones asked me why I was so interested in organization work, particularly the Railroad Brotherhoods. He stated that he thought that I was very foolish and so were the rest of the men, for entertaining the thought of joining that organization.

I replied that I thought that it was my privilege to select the organization I desired to represent me. In this Mr. Jones concurred but he still insisted that he thought we were very foolish in desiring to affiliate with that organization, namely, the Brotherhood of Locomotive Engineers and Enginemen.

(Tr. 159–176):

Q. Mr. Sager, did you go into Mr. Travis' office on the third day of October 1933, or about that date?

A. I did so.

Q. How did you come to go into his office?

A. Coming up northbound from San Luis Obispo to San Francisco on the nite coach, or from Salinas—correct that, please—from Salinas to San Francisco, drivers A. F. Martin and E. A. Raymond were on the nite coach and they came up into the cab of the car and during that a general discussion of the company union took place on their part to try to persuade me to forget the Brotherhood activity.

After arriving in San Francisco, why they suggested that I should go down with them to see Mr. Travis. I wasn't at that time convinced that I should go down. We went to get something to eat and the argument continued.

Finally, rather than have a lot of interference on the part of the company officials, and being called into the office, I decided to sign the company union blank at that time.

Q. Will you stop, please, just a moment?

Mr. Sager, I hand you what purports to be an application for membership in the Employes Association, Pacific Greyhound Lines, Division No. (blank), and I ask that the exhibit be marked Board's Exhibit No. 24 for identification, and I ask you whether this is the blank that you signed at that time?

(The document referred to was marked "Board's Exhibit No. 24 for identification.")

A. (Examining document.) This is a copy, or an exact copy of the one I signed.

* * * * * * *

By Mr. SHAW:

Q. Is the document that you signed, Mr. Sager, was that signed in Mr. Travis' office?

A. I signed that in the restaurant, in the San Francisco Terminal Building.

Q. Was it prior to your trip to Mr. Travis' office?

A. Yes, sir.

Q. At the bottom of the exhibit itself, Board's Exhibit No. 24, there is this:

"*To the Treasurer, Pacific Greyhound Lines, Inc.:*

"You are hereby authorized to deduct the sum of One Dollar ($1.00) from the first period pay due me for each of the following months, October, February, and June and to deposit said amount to the credit of Employees Association Pacific Greyhound Lines as directed by its General Secretary."

Then there is a place for the signature and occupation.

Did you sign that authorization?

A. I did.

162 Q. As a matter of fact, were those sums deducted from your pay?

A. The deductions hadn't started at that time, but they later were.

Q. Did those deductions continue up past July 5, 1935?

A. Yes.

Q. You then went to Mr. Travis' office, did you?

A. Yes; I went with Mr. Martin and Raymond.

Q. Did you see Mr. Travis there?

A. We sat outside of his office for some little time and Mr. Travis came in, and we were showed into a room adjoining Mr. Travis' private office.

Q. What did Mr. Travis say when you were called in?

A. The boys informed him that I had signed a company union blank.

Q. What did Mr. Travis say to that?

A. I don't recall what particular point. There was a general discussion that went on in reference to the adjustments of minor details for the drivers' agreement, and he asked the concurrence of the adjustments that he was offering to the drivers' representatives, and possibly some objection that I don't recall, but in general they were concurred in, and he asked my opinion.

I told him that I was not a representative of the drivers and couldn't pass any judgment on any of the adjustments.

163 Q. Did he say anything about a campaign to put the company union over?

A. Yes.

Q. What did he say?

A. He stated that we had to all get behind the company union and put it over before the Brotherhood got in.

Q. How long did that conference last that morning?

A. Why, I would judge from about an hour to an hour and a half.

Q. What happened then?

A. We went out to lunch.
Q. Did you come back that afternoon?
A. We did, at Mr. Travis' request.
Q. What went on that afternoon when you came back?
A. There was a general discussion going on. Mr. Raymond brought in a telegram that had been prepared in the office.
Q. You were sitting in Travis' office?
A. I was sitting in the office adjoining Mr. Travis' private office—and asked me to sign it.
Q. Who was in the same room with you at the time?
A. Mr. Johnson, Judge Lucas.
Q. Judge Lucas, counsel for the company?
A. Correct. Mr. Martin and Mr. Raymond.
Trial Examiner Woop. Who is Raymond?
The WITNESS. He was at that time the company union representative from the Los Angeles Division 3.

By Mr. SHAW:

164 Q. And Mr. Martin was representative in what division?
A. Division 4.
Q. What did Mr. Raymond's telegram contain?
A. The telegram was addressed to Warren Macey.
Q. Who is he?
A. One of our key men, Brotherhood key men in Los Angeles.
Q. What did the telegram say, to the best of your knowledge?
A. "Division No. 4 going 80 per cent"—I may not be correct on it, but 80 to 85 per cent—"80 per cent company union. Suggest Division 3 get in line."
Q. Whose name was signed to it?
A. My name was signed to the telegram. I signed this telegram due to the fact that I was prevailed upon at that time. After having signed the company union blank, to prevent any further bothering me in reference to the *ro*ganization, I thought that I was in a position that I couldn't do much else.
Q. Yet you knew at the time you signed that blank you were not telling the truth, is that correct?
A. I did so.
Q. You knew that one week before that there had been an election in which the company union had been voted down unanimously, hadn't there?
A. Right.
Mr. BOWEN. You mean an election?
Mr. SHAW. Yes, an election on the evening of September
165 27th.
Mr. BOWEN. There was only one election that was held by the Labor Board and the Brotherhood voted it down.
Trial Examiner WOOD. Off the record.
(Whereupon followed informal remarks off the record.)
Trial Examiner WOOD. On the record, please.

By Mr. SHAW:

Q. By "election" you mean ballot as referred to in previous testimony taken on the 27th of September?

A. I do.

Q. Did you receive any telephone call that day from your wife?

A. I did, sir.

Q. What was the nature of that call?

A. I was called from the conference room, where the drivers and Judge Lucas and Mr. Travis was present, in answer to a telephone call at which time my wife phoned me. She advised me that if I had signed the company union blank my clothes would be out in the hall.

Realizing she meant exactly what she said, I went back into the room and asked Mr. Travis if I might have a private interview with him, which he granted.

I told Mr. Travis that my wife had threatened to put my clothes out in the hall if I joined the company union. I told him that since my house came first I would desire to withdraw my application, which was done.

Mr. Travis then suggested that perhaps he had better dis-
166 cuss the situation with my wife. I told him at that time I didn't think it would be of much use to try to discuss it with my wife. However, he insisted that he would like to talk to her.

On my arrival home that evening I informed my wife that Mr. Travis would like to see her, and she went to the office the next morning.

Q. During this period, and for a period of several months, has you been, for a period of the next several months, did you have any conversation with Mr. Krug?

A. Well, I was constantly reminded to keep my nose clean from time to time by Mr. Krug.

Q. What did that mean to you?

A. In other words, that the first thing that came along why I would be let out.

Q. Were you notified of a speech to be given on April 19, 1934, by Mr. Travis?

A. I was.

Q. Did you attempt to go to that speech?

A. I did.

Q. How did you know about the speech?

A. From a bulletin on the bulletin board, a notification that there would be a joint meeting of Divisions 4, 5, and 6.

Q. It was just following this speech, was it not, that an election was held by the National Labor Board?

167 A. Following that.

Q. By the National Labor Board?

A. Right.

Q. How long after that speech was given?

A. I would say some 10 days, approximately.
Q. Were you allowed to go to that meeting?
A. I made application for relief, in accordance with a bulletin issued by Mr. Travis, and a man had been assigned to my run. I was advised on the morning of the meeting by the dispatcher that a man had been assigned to my run and I would be relieved from duty that evening.
Mr. Krug informed me later I couldn't attend that meeting. Whereupon I phoned Mr. Travis' office and asked if I was being refused permission to attend that meeting. I did not secure Mr. Travis personally on the telephone, but his secretary. I asked if he would call back and let me know. I received no reply in reference to that.
Q. You didn't go to the meeting?
A. I did not.
Q. The election of the Labor Board was held, was it not?
A. It was.
Q. And the company union won the election?
A. Right.
Q. Do you recall what the total vote was?
A. Yes; 310 to 64.
Q. Was the Brotherhood very active after that election?
148 A. The matter dropped at that time after the defeat by the company union, although the topic, the item was discussed from time to time. We had hopes of some day completing an organization for the drivers, but we decided at that time it was best to let it rest.
Q. Do you know whether any attempt was made to organize an independent labor organization not connected with one of the Railroad Brotherhoods, but not a company union?
A. I do.
Q. Who made that attempt among the Greyhound drivers?
A. Mr. Perryman and Mr. Seeman, from Division No. 5.
Q. From your discussion with them, do you know why they wanted to form this organization?
A. I do.
Q. What was the reason?
A. Mr. Travis had assured the boys that if they rejected the company union that at any future date when they were dissatisfied——
Q. (Interrupting.) Just a minute—rejected or accepted?
A. Excuse me—if they rejected the Brotherhood that at any future date when they were dissatisfied and desired an organization he would go along with them, in respect to any organization but the Railroad Brotherhood.
If I remember correctly the statement that he made at the
149 time was that his word was absolutely good on that subject.
Mr. Perryman and Mr. Seeman were taking Mr. Travis at his word in attempting to form an independent organization not related with the Brotherhoods.

Q. Do you know what they called that organization?
A. Motor Coach Operators, if I recall correctly.
Q. That was not affiliated with the Brotherhood, was it?
A. It was not.
Q. Mr. Sager, I hand you Board's Exhibit No. 25 for identification, purporting to be a printed notice to "All Drivers Pacific Greyhound Lines," and it is signed by Chas. H. Perryman and Milton L. Seeman. I ask that it be marked for identification and then I will ask you the question of whether or not you have seen that document.
(The notice referred to was marked "Board's Exhibit 25 for identification.")

By Mr. SHAW:

Q. Have you seen that document before?
A. Yes; I was presented one of these documents.
Q. To your knowledge, were they in general circulation among the drivers of the Pacific Greyhound Lines?
A. They were being distributed by drivers from Division No. 8 and also by Mr. Perryman and Mr. Seeman.
Mr. SHAW. I offer it in evidence.
Mr. BOWEN. Establish the time, please.

By Mr. SHAW:

170 Q. About what time did you see that, Mr. Sager? I mean what time was it in circulation. I presume it was some time after September 1934, because the document quotes the President's order of that date.
A. I don't recall just the exact date, but it was in circulation some little time prior to the invalidation of NRA.
Q. Would you say in the fall of 1934?
A. Possibly in the early part of—either the late fall or the early part of 1935. I cannot be exactly certain on that date, but it was along during that period of time.
Q. Mr. Sager, hadn't you known Mr. Perryman and Mr. Seeman for a long time?
A. I know Mr. Perryman for quite some time.
Q. Had they been employes of the company for quite a while?
A. Yes. Mr. Perryman was employed on Division 8 prior to his service on Division 5.
Mr. SHAW. I offer the document in evidence.
Mr. BOWEN. Just the general objection.
Trial Examiner WARD CHAPMAN overruled and the exhibit is received in evidence.
(The notice referred to was received in evidence and marked "Board's Exhibit No. 25, Witness Sager.")

By Mr. SHAW:

Q. Do you know what happened to Perryman and Seeman as soon as they began the organization of this independent organization?

A. The general opinion was that they were being called—
171 first, I believe that Mr. Perryman was allowed to present his case to Mr. Travis, or to the drivers' representative—I wouldn't be certain but one of the two—to offer his plan.
plan.

Q. Do you know what happened to them as far as their position with the company was concerned?

A. They were finally discharged.

Q. Finally discharged?

A. Yes, sir.

Q. Do you know whether their case was taken to the National Labor Relations Board or not?

A. It was.

Mr. Shaw. Mr. Chairman, at this time I wish to have marked for identification, Board's Exhibit No. 26, a finding of fact of the National Labor Relations Board, issued April 11, 1935, finding that Charles H. Perryman and Milton L. Seeman, the two gentlemen referred to in Board's Exhibit No. 24, were discharged for their activity in organizing the Brotherhood of Motor Coach Operators, and were ordered taken back and with back pay.

172 (The document referred to was received in evidence and marked Board's Exhibit No. 26.)

By Mr. Shaw:

Q. Do you know whether those two men were ever put back to work?

A. They weren't.

Q. There was no compliance with the Board's decision?

A. No, sir.

Q. Is it true that in the fall of 1935 the Brotherhood began a reorganization campaign?

A. The first part of that movement started in the latter part of July.

Trial Examiner Wood. You now refer to the railroad brotherhood?

Mr. Shaw. Yes.

Trial Examiner Wood. And you will not again be referring to this independent organization?

Mr. Shaw. We will not be again referring to that.

By Mr. Shaw:

Q. As a matter of fact, Mr. Bagge, with the discharge of
173 those two quit the agitation for this particular organization dropped, did it not?

A. That is quite right.

Q. You said that Mr. Travis promised that the men could join any other organization except a railroad brotherhood. Do you recall whether he stated that in a bulletin or not?

A. I do not recall him saying it in a bulletin, but the word was passed out from the meeting of April 1933 that he made such a statement.

Q. In 1934, you mean?

A. Yes; in 1934.

Q. And to your knowledge these men were trying to take advantage of Mr. Travis' own promise; is that correct?

A. That is correct.

Q. Who were the leaders in the reorganization campaign among the drivers at the end of July 1935, Mr. Sager?

A. Driver Lyons and myself started the movement on the north end of Division 4. Driver Macey on the southern end of Division No. 3. We also had a key man in other points.

Q. When did you carry on your campaign? When did you do your soliciting?

A. During our time off.

Q. How much time off did you have?

A. On arriving in San Francisco in the mornings—I get in at 10:05 in the morning and I didn't have to report until 8:15 the following morning. I devoted a great deal of that time to organizing activities; also on my days off, as well as with
174 Driver Lyons, whose day happened to fall on my particular days off. We travelled from point to point throughout Divisions 4, 5, and 6 and conducted our organizing campaign.

Q. Did you drive a car around to various parts of the system?

A. We did.

Q. Were you effective in signing up great many men?

A. We were.

Q. Do you recall being called into Mr. Jones' office on or about the 29th of August 1935?

A. I was.

Q. How did you come to be called in there?

A. The dispatcher notified me on the night of the 28th, about 10 o'clock, that Mr. Jones desired to see me.

Q. Did you go in and see him?

A. I phoned Mr. Jones the following morning and made an appointment with him.

Q. And you went in to see him?

A. I did.

Q. What did Mr. Jones tell you that morning?

A. Well, Mr. Jones said that he understood this brotherhood activity was under way again and also that he heard that I was taking an active part in it.

I replied to Mr. Jones that he had no proof of that but, however, I still felt the same way about the organization as I did in 1933 and that if I were asked to assist in organizing it I would do so to the best of my ability.

175 Mr. Jones stated at that time that he still thought we were foolish for entertaining the brotherhood idea, but that if we

were going to go into the Brotherhood we should go into it as an independent unit.

I assured Mr. Jones at that time that that was the intention in the first place; that we would be an independent unit with our own separate local chairman, and our own general grievance committee, and that we would do our own negotiating of grievances without the assistance of the Brotherhood until such time as we couldn't negotiate with the management. Then we would, therefore, call on the Grand Lodge to send in a Vice President to help or assist in negotiating. I told him that we couldn't present it to the men on any other basis other than an independent organization, and that was the sole purpose of it, for a driver's organization and all driver's representatives.

Q. Did Mr. Jones make any statement about knowing who any of the leaders were in the organization?

A. Mr. Jones stated he knew one of the key men in Los Angeles and that I knew who he was referring to. No names were mentioned.

Q. Did you know who he had reference to?

A. I did.

Q. Who is that?

A. Warren Macey.

Q. Was there any other discussion after that time?

176 A. There was very little said after that, other than that I told Mr. Jones when I left the office I would assist the organization to the best of my ability.

180 *Testimony of Lou Harnish*

DIRECT EXAMINATION

(Tr. 180–186):

Q. Were you driving a Chrysler car on March 7, 1936?

A. Yes, sir.

Q. Were you struck by a Greyhound bus?

A. Yes, sir.

Q. Was Mr. Sager the driver of it?

A. He was.

Q. After the accident, Mr. Harnish, did you go to the Greyhound office and attempt to get the case settled?

A. I did.

Q. Whom did you talk to there?

A. I don't remember the man's name. It was down at the terminal building.

Q. What did the man tell you?

A. He asked me what it was about, and I told him. He said he would go up with me, up on California Street to take me up to another office up there to make a report of it.

Q. Did you go up to that place?

A. I did.

Q. Who——?

Q. Whom did you talk to up there?
A. I don't really recall the gentleman's name.
Q. Was it an official of the company, do you know?
A. Yes, sir.
Trial Examiner Woon. Was that immediately following the accident on the same day?
181 The WITNESS. No; the accident was on Saturday, if I recall, and this was the following Monday.
By Mr. SHAW:
Q. What did that gentleman on California Street tell you?
A. Well, he asked me to explain to him as near as I knew, how the accident happened, which I did.
Q. I see.
A. He then told me that he would have an adjuster and a photographer come down to the parking lot where the car was parked and take pictures of it.
Q. Was that done?
A. That was done.
Q. And did the adjuster come down?
A. He did.
Q. What was the adjuster's name?
A. Dunn, as I remember it.
Q. Will you relate to us the various conversations you had with Mr. Dunn when he came down to adjust it?
A. Well, when he came down he looked the car over and he asked had the photographer come down. I said "no" so we talked a little while and then the photographer came and took the pictures.
Then I said, "Who do you wish to have repair this car?" and this I said, "Well, if it is all right with the company I would prefer to have the McAllister dealer do it."
182 He said, "You call McAllister's man and have him come down and give an estimate and if it is anyways near what the company can do it for we will go ahead and let him do it."
Mr. Bolan, from the McAllister company came down and set a price on the work. Mr. Dunn said it was satisfactory to him.
Then Mr. Dunn said he would have to have a release from me and my wife for the car and I said it was perfectly all right.
So on the way down from the McAllister auto company to our home I asked him, I said, "What about Sager?"
He said, "Well, you know, I try to make it as easy as I can for everybody." He said, "You have been willing to settle and," he said. "The chances are that Sager will lose his position but," he said, "I am trying to help him hold it."
And I said, "For why?"
He said, "Well, the company has been trying to get his goat for some time."
Mr. BOGUE. Who said that?
Mr. SHAW. Mr. Dunn, the adjuster for the Greyhound Lines.

By Mr. SHAW:

Q. Did he say anything else about Mr. Sager?

Mr. BOWEN. That gentleman, I am informed, is no employe of the Greyhound Lines at all.

Mr. SHAW. I am going to come to that, Mr. Bowen.

By Mr. SHAW:

Q. Whom did Mr. Dunn represent himself to be?

A. He told me that he was the adjuster for the Greyhound Company, or the Greyhound Insurance Company.

183 Q. Did he sign a check to pay you with?

A. He did.

Q. Whom did he sign the check for? As an officer of what company did he sign the check for?

A. As I understand it, the check was for the Pacific Greyhound Insurance Company.

Q. And he signed that check?

A. He signed the check.

Q. Was there any personal injury?

A. No, sir.

Q. What was the amount of the settlement?

A. $55.

Q. What did that cover, the $55?

A. Repairs to the car.

Q. What repairs?

A. Well, there was the body that was caved in, and the tire carrier and the rim, and the alignment of the front wheels.

Q. How much did you offer to settle for and what were the negotiations that led up to the settlement?

A. He said what I wanted and I said, "All I ask is the car to be put back in its original condition."

Q. He was agreeable with that, was he?

A. Yes, sir.

Q. The amount of that was $51, wasn't it?

A. Well, he told me, "We will make the check for $55 because it may run a few cents over as there is also a tax on the parts,

184 new parts to be used."

Q. And when you got through with that did you have a little cash left over?

A. Probably a couple of dollars.

Q. When you went down to see about your car did you go to the Greyhound Insurance Company or did you go to the Greyhound Lines?

A. I went to the Greyhound office at the corner of Fifth and Mission Streets.

Q. Is that the office of the Greyhound Lines?

A. Well, as near as I know.

Q. The Pacific Greyhound Lines?

A. Yes, sir.

Q. And you gave your version of the accident there, did you?

A. I talked to the young fellow there and he said, "You come and go with me. There is a man up on California Street"—I think it was in the 100 block if I am not mistaken—"and he looks after that part." I went up there and gave him the version as near as I could as to how the accident happened.

Q. Mr. Harnish, did he make any statement about the company watching Sager, or did he say they were trying to get his goat?

A. That they were trying to get his goat.

* * * * * * *

185 Q. Did he say this accident would go kind of hard on Sager?

A. He did.

Q. Just what did he say in that respect?

A. Well, he told me, he said, "You know this fellow has a wife and two youngsters and if this accident goes against him, if they can prove that he was at fault, it will be hard for him to hold his job."

Q. I want to ask you one more question about this check. Do you recall exactly what the signature on that check was?

A. I know that the check, the signature was Dunn, but the initials I don't remember.

Trial Examiner Wood. But you did see Pacific Greyhound Insurance Company on that check, was the check so entitled?

The Witness. I am almost certain that it was.

By Mr. Shaw:

Q. You would know whether this was a personal check of Mr. Dunn's or not, wouldn't you?

A. Yes, sir.

Q. Was the check already signed when he handed it to you? Did he fill in the amount?

A. He filled in the amount and filled in his name. It was not a personal check.

186 Q. And his name as the agent of some corporation or company?

A. Yes.

Q. And to your best recollection the name of that company was The Pacific Greyhound Insurance Company?

A. As near as I can recollect.

188 (Tr. 188–189):

Cross examination by Mr. Bowen:

Q. These statements that you related on your direct examination were made by this Mr. Dunn, the man that adjusted your claim?

A. How do you mean?

Q. The statements that you made that he said that they were trying to get Sager's goat, those statements were made by Mr. Dunn, the man adjusting the claim?

189 A. Yes, sir.

191 *Testimony of Vincent R. Sager (recalled)*

(Tr. 191–194):

Direct examination by Mr. SHAW:

Q. Mr. Sager, do you recall having been in the office of Mr. J. W. Krug on or about the third of September, 1935?

A. I do.

Q. How did you come to be in his office at that time?

A. I went in in regard to a package that had been lost or hauled by, to be more specific, which consisted of a box of raviolis destined from Gilroy to Greenfield.

Q. Did you talk with him about that?

A. I did. I discussed the situation with Mr. Krug.

Q. What did he say?

192 A. He told me that a package had been hauled by. I said it was quite possible I could be at fault in the hauling by of that package, due to the number of express packages handled on that schedule; but I didn't recall hauling that one by. I suggested that Mr. Krug check the manifests out of Los Angeles to see whether it came in on my schedule, arriving in Los Angeles and was re-manifested from that point.

Q. By "manifest" you mean the waybill?

A. Waybill is correct. Mr. Krug said, "Well, it doesn't amount to anything. You can settle the matter and have a bonus deduction. The amount won't run over $3. to $5."

Q. Did you pay the amount?

A. I did.

Q. How much was it?

A. $4., if I am correct; $4. or $4.40. Mr. Krug gave his personal check for it.

Q. And you paid him?

A. I paid Mr. Krug the money.

Q. What else did Mr. Krug say that morning?

A. We entered into a discussion. He opened the discussion of the Brotherhood and said that he understood I was taking an active part.

I told Mr. Krug he had no proof of the statement. However, I would, if asked to, take an active part.

He said, "You told me after the close of the last election that it was a closed book."

193 I refreshed his mind to this extent: That I also told him it would be a fight to the finish and the end was not in sight yet.

Whereupon Mr. Krug said he was going to hold me to my promise about the closed book incident.

Q. Did he say anything about Mr. Travis?

A. Yes, he did. He stated he hadn't as yet been asked by Mr. Travis who were the key men in the situation, but he would be asked, and, of course, if I was taking an active part he would have to inform

Mr. Travis that I was and that he suggested that I stay out of the argument as one was sure to arise.

I informed Mr. Krug at the time that I still thought that the Brotherhood was the proper organization and if I felt that way, and I was asked to take a lead, I certainly would.

Trial Examiner Wood. To what argument do you refer?

The Witness. In reference to the closed book event.

By Mr. Shaw:

Mr. Sager, I hand you Board's Exhibit No. 28 for identification, which is entitled "What does the Wagner Bill mean to employes?"

(The document referred to was marked "Board's Exhibit No. 28 for identification.")

By Mr. Shaw:

Q. Board's Exhibit No. 28 for identification purports to be signed by the management and I ask you whether you have seen the document?

A. (Examining document.) I have.

Q. Where did you see it?

194 A. The document was left in the drivers' mail box in a brown ticket envelope at San Luis Obispo with my name on it.

Q. Was it a company envelope?

A. Yes; it is the type of envelope we use for enclosing our tickets.

Q. Do you know whether there were other envelopes in other driver's boxes at the same time?

A. There is only one box at that particular point.

Q. About what date did you receive that, if you know?

A. About September, if I recall correctly.

Q. Of 1935?

A. Yes, sir; somewhere.

Mr. Shaw. I offer the document in evidence.

The Witness. It might have been a little later. I cannot be exactly certain of the date.

195 (Tr. 195–197):

By Mr. Shaw:

196 Q. Mr. Sager, did you speak to Mr. Krug on October 7, 1935, or about that date, concerning the layoff privilege?

A. I did, sir.

Q. Will you discuss that conversation?

A. Arriving on my run at 10:05 on that date, I applied to the dispatcher to be relieved on October 8th and 9th. The dispatcher informed me that there were plenty of extra men available and could see no reason why I couldn't be relieved; but that I would have to take the matter up with Mr. Krug personally.

A few moments later Mr. Krug came in and I asked to be relieved on those respective days. He told me under no consideration would I be allowed to have those two days off.

At that point I asked Mr. Krug why the partiality shown to other drivers who had, at other times during the peak of a rush, been allowed from seven to thirty days, and that I couldn't have the privilege of being allowed two days off.

His reply was, "I always let men off when they have to be off."

I went over to the ticket window then to turn in my cash fares and again accosted Mr. Krug in the depot. I asked him why again the partiality.

His answer at this time was he didn't have sufficient men for the race track. We run busses from San Francisco out to the track—and I volunteered at that time to work the track on both days men-
197 tioned, but Mr. Krug still refused me the permission to have those two days off.

Q. Mr. Sager, is it true that the great majority of your soliciting for the Brotherhood took place while on days you were laid off?

A. Yes, sir; that is correct.

198 (Tr. 198–200):

Q. Mr. Sager, were there a number of drivers who, around Christmas time of last year, 1935, presented Mr. Jones with a Christmas gift?

A. Yes.

Q. Who were those drivers?

A. A group of Brotherhood drivers.

Q. What did you give him for Christmas?

A. A wallet.

Q. How did you deliver the gift to him?

A. My wife took it in one day while we had to double park. There was no parking space outside the Greyhound general office building. She took the wallet in.

Q. Was the gift sent back to you?

A. Yes, sir.

Q. Did he know, at the time the gift was sent, that it was from the Brotherhood drivers?

A. Yes. There was a card attached to it, "From the Drivers of B. L. F."—no other names on it.

Q. I hand you Board's Exhibit No. 29 for identification, which purports to be a letter signed by Mr. Jones, General Manager
199 of the Pacific Greyhound Lines, under date of January 27, 1936, and addressed to V. R. Sager, 305 Hyde Street, San Francisco, California, and ask you if you received that letter.

A. (Examing letter.) I did.

Q. Did that letter accompany the returned gift?

A. Yes, sir.

Trial Examiner Wood. Are you offering the exhibit?

Mr. Shaw. I offer it in evidence.

Mr. Bowen. No objection.

Trial Examiner Wood: Board's Exhibit No. 29 received in evidence.

(The letter referred to was received in evidence and marked "Board's Exhibit No. 29, Witness Sager.")

By Mr. SHAW:

Q. You made a statement that you went into Divisions 5 and 6 soliciting members. When did you do that?

A. On my regular days off.

Q. Do you mean in the fall of 1935 and the winter of 1936?

A. Yes, up until the time I was discharged.

Q. Up until the time you were discharged?

A. Yes.

Q. Were you elected to office around the first of January of 1936?

A. In the month of January, yes, sir.

Q. What office were you elected to?

A. Local chairman of Lodge 91 for the drivers.

Q. Of the Brotherhood, that is?

200 A. Correct.

Q. Were you local chairman of the drivers' division of that local?

A. Yes; representing Division 4 of the Brotherhood members only.

Q. You only represented the drivers who were members of the Brotherhood?

A. Correct.

201 (Tr. 201-208):

Q. Do you know Mr. M. W. Woods, the head agent at San Jose?

A. I do.

Q. What is his office there?

A. Head agent.

Q. And what other office?

A. Well, he acts as a dispatcher and in a supervisory position under Mr. Krug.

Q. During this time that you were busy soliciting members—that is, from the fall of 1935 into the winter of 1936—did you have any conversation with Mr. Woods about your soliciting?

A. Well, it was generally discussed, and Mr. Woods told me that I was walking on thin ice and I would have to walk a pretty straight line because he had been instructed to turn me in for any violation of the rules or regulations of any kind.

Q. Did he tell you that you were on the spot?

A. He did.

Q. What was the date of your accident with Mr. Harnish's car?

A. March 7, 1936.

Q. Just prior to this had you been very busy organizing the

202 men?

A. Using all the spare time available.

Q. Had you been successful in getting many men into the organization?

A. I had.

Q. What time did you come into the office of the Greyhound terminal in San Francisco on the morning of the 7th of March?

A. I arrived on my run at the Fifth and Mission Street terminal at 10:05 in the morning, having left San Luis Obispo at 2:50 a. m.

Q. Driving from 2:50 in the morning until 10:05 that morning?

A. Correct.

203 Q. What did you do then?

A. I went home and changed clothes.

Q. Did you sleep any?

A. No. That is not my habit. I do my sleeping in the evening.

Q. When was the next time you had to go out on your regular run?

A. My next regular assignment, on the run that I was assigned to, was at 8:15 the following morning.

Q. So you had plenty of time to sleep before you took that run out?

A. Certainly.

Q. What time did you come back down to the terminal?

A. I went down to the terminal—I arrived between 5:20 and 5:30. I went down to get my check.

Q. Were you in civilian clothes or driver's clothes?

A. Civilian clothes.

Q. Were you in civilian clothes?

A. Correct.

Q. You didn't intend to work that day?

A. I hadn't been called or hadn't been asked to protect.

Q. In your past experience had you ever been asked to work when you came back at that time of day?

204 A. Mr. Bresnan asked me on one other occasion, during the fall of 1935, if I would pull a load to the races. He asked me there on the morning I was southbound to San Luis Obispo. I told him that I would accommodate him. But upon returning Mr. Bresnan stated that Mr. Krug said he couldn't let me do it because it was a violation of hours of service.

Q. Now, did you speak to anybody when you came back to the office at about 5:20?

A. Yes; I asked for my check.

Q. Whom did you ask for your check?

A. I asked the dispatcher.

Trial Examiner Wood. What date?

Mr. Shaw. March 7, 1936.

By Mr. Shaw:

Q. What did the dispatcher tell you?

A. He handed me my check, and suddenly decided they needed a man to go to the races. I protested going, and we talked back and forth. I told him I didn't desire to go; that I didn't feel I should; that I had other plans, and I hadn't been notified prior to that time to go out, and I didn't think it was just that I should go.

He insisted, and I still refused, but after thinking the matter over, the position that I was in on account of organizing activities, it placed me in a position to create an act of insubordination by refus-

ing to go out. Rather than put myself in that position I consented to go.

206 Q. It was on this drive that you had the accident?

A. Correct.

Q. Did you have to get into driver's clothes?

A. No, sir.

Q. You went out in your civilian clothes?

A. I did, sir.

Q. Is it customary that drivers drive in civilian clothes?

A. It occurs occasionally in the race track service. A lot of extra men are hired for that, and they are not required to buy uniforms at that time because there is no assurance of it being permanent employment at that particular time.

Q. Now, on this extra work at the race track, you knew that it was a pretty dangerous assignment because of the amount of traffic, didn't you?

A. Yes. There is always a chance for a man losing his bonus out there for the privilege of earning a dollar. The majority of the men don't care for that particular phase of it. Accidents seem to be more frequent on that run due to the congestion of traffic at that time. It is heavier than normally. You get a dollar or two dollars and a half, owing to the length of time you stay out, and it is hardly worth it in face of the fact you might lose your bonus, which would result anywhere from $20 to half the amount of your bonus.

* * * * * * *

208 Q. Did the accident occur on the way from the race track?

A. Returning from Tanforan.

Q. Was your bus full of people?

A. Yes, sir.

Q. How many passengers did you have in the bus at that time?

A. Sixty some odd passengers.

Q. Were there seats for all of them?

A. No, sir.

Q. Your bus was packed, in other words?

A. It was loaded; yes, sir.

Q. A number of people standing?

A. Yes, sir.

Q. Had you ever driven that particular bus before?

A. Yes; some time back I had; yes.

Q. You hadn't recently, however?

207 A. No, sir.

Q. Are the buses pretty much the same? That is you get used to one and you have no trouble driving another?

A. The general handling of a bus is very similar. The gear shift happens to be a little different on the Duplex type.

Q. What do you mean by the "Duplex type?"

A. Double-decker.

Q. Was this a double-decker?

A. Yes, sir.

Q. Double-decker means seats below and above for passengers?
A. Correct.
Q. Now, after the impact with Mr. Harnish, his car, did you stop your bus?
A. I did immediately; stopped at the point of impact.
Q. And did you get out of the bus?
A. I pulled the bus over to the curb to keep from obstructing traffic.
Q. And you had a conversation with Mr. Harnish, I suppose?
A. I asked Mr. Harnish for his license, took the license number of his car, his operator's license.
Q. Did you take the name of any witnesses or anybody like that?
A. I had Mr. Harnish's name and I got the witnesses, the passengers, after arriving in San Francisco at the terminal. No passengers left the coach between the point of the accident and the San Francisco terminal, at which time I asked the dispatcher,
208 and some of the drivers, to secure the names, due to the fact that it is difficult to get witnesses under those conditions.
209 (Tr. 209-220):
Q. Mr. Sager, before we proceed further I want to ask you whether at the time you took the bus out to the races, you had
210 notified them at the central terminal offices that you had not slept?
A. I notified the despatchers. There were two despatchers present, Mr. Salvotto and Mr. Furrer.
Q. Now, Mr. Sager, you testified that after the accident you had a conversation with Mr. Harnish, and then you drove your bus on into San Francisco?
A. Yes, sir.
Q. Was Mr. Harnish's car moved then?
A. No, sir.
Q. Was there any injury to any passenger in your bus at all?
A. Not that I know of.
Q. When you took the bus back to San Francisco to the Terminal, did you make a report of the accident?
A. I did, sir.
Q. Is that a matter of rule?
A. Yes, sir.
Q. Where did you make the report?
A. Mr. Krug's office, to Mr. Krug's secretary.
Q. Mr. Krug himself was not present?
A. No.
Q. Did you fill out the report which is an exhibit in this case, Respondent's Exhibit 2?
A. I did.
Q. Had you been in any previous accident where you had to
211 make a similar report?
A. Yes, over the period of seven years, on several occasions.

Q. Well; all I want to know is whether you followed that same procedure?

A. It is customary to make a report of every accident.

Q. Had you made any other report in addition to the preliminary report you made at that time, on other occasions?

A. I didn't quite understand the question.

Q. Let me reframe it. Was it customary that you make out only the report which is Respondent's Exhibit 2, or was it customary to make out other reports?

A. We make out a statement of fact.

Q. Is that all you do in every accident?

A. Other than an investigation being conducted by the insurance investigators.

Q. In that case you make out a more detailed report, do you?

A. We give him a detailed report.

Q. That was not given in this case?

A. No, sir.

Q. Were you asked for that?

A. No, sir.

Q. What was the name of Mr. Krug's secretary?

A. Mr. Dillinger.

Q. Did Mr. Dillinger say anything to you about reporting further?

212 A. He decided he had better phone Mr. Krug and determine whether I should go on or not.

Q. Did he phone Mr. Krug?

A. He did.

Q. What did Mr. Dillinger tell you after he phoned Mr. Krug?

A. I was to be taken out of service.

Q. What time was this?

A. Between 7:30 and 8 o'clock in the evening.

Q. Is that about the time you got back?

A. No; I had been back and made out my report.

Q. On your regular run you are discharged at what time?

A. 8:15 the following morning.

Q. What instructions did Mr. Krug's secretary give you?

A. To lay off and wait until Mr. Krug phoned me.

Q. Did Mr. Krug phone you?

A. Yes; he did.

Q. What day was that?

A. I believe on the Monday or Tuesday following.

Q. What date was the accident?

A. March 7.

Q. What day of the week?

A. Saturday.

Q. He phoned you Monday then. What did he say?

A. He asked me to read over the report that I had signed along with the statement of how the accident occurred, which

213 I did.

Q. Did you do that in Mr. Krug's office?
A. I did that in Mr. Krug's office.
Q. Did Mr. Krug tell you anything about when you should come back to work?
A. Said he would advise me of the accident insurance department's decision.
Q. Did he say when he would advise you?
A. As soon as he received word.
Q. Did he receive any such word that you known of?
A. Yes; he did.
Q. What word did he receive?
A. Well, I was phoned and asked to come in on March 13 to his office.
Q. And what did he tell you at the time you came in then? Did you come in on March 13?
A. I came in on March 13.
Q. What did he tell you?
A. Told me I was being taken out of service.
Q. Did he tell you anything else?
A. Told me the reason for being taken out of service was full responsibility for the accident and speeding.
Q. Did he hand you anything?
A. Mr. Krug handed me a State Unemployment Quit Slip, on
214 which it stated that I was being discharged for full responsibility of the accident and speeding, and I refused to sign the same.
Q. Why?
A. On the ground that it was not true.
Q. You didn't think you were fully responsible in this case?
A. No, sir.
Q. At the time you were driving this car, what speed were you allowed to make?
A. 45 miles.
Q. And the record stated that you were making 40 miles an hour?
A. Yes.
Q. Did Mr. Krug tell you anything about whether he had anything to do with the firing of you or not?
A. Mr. Krug advised me he had nothing to do with it.
Q. Did he tell you who had?
A. He told me the orders came from the head office.
Q. Do you know if orders to discharge usually come from the head office or whether Mr. Krug has authority to discharge?
A. Mr. Krug has authority. On some occasions they are sent from the general office.
Q. By general office, who do you mean?
A. The secretary-manager.
Q. Who is in charge of that?
215 A. Mr. Travis and Mr. Jones.
Q. Did you attempt to appeal the case, or anything of that sort?

A. I attempted to get in touch with Mr. Travis, was unable to do so for several days, and I was finally told by his secretary over the phone that Mr. Travis would see me.

Q. Did you make an appointment to see him?

A. I did.

Q. I hand you Board's Exhibit No. 30 for identification—I have just had it marked for identification—which purports to be a certificate of service, and ask you whether this is the quit slip which was handed to you by Mr. Krug at the time of your discharge?

A. This is the certificate. But the certificate was not handed to me at that time.

Q. When was it handed to you?

A. On April 2, 1936.

Q. Who handed it to you?

A. It was handed to me in the presence of Mr. Krug.

Mr. SHAW. I offer this in evidence.

Trial Examiner WOOD. There being no objection, it may be received in evidence.

(The document referred to was received in evidence and marked "Board's Exhibit No. 30, Witness Sager.")

216 By Mr. SHAW:

Q. Is this the customary slip handed to all employes on leaving service?

A. Yes, sir.

Q. Did you ask to have it furnished you?

A. I had to phone and ask them for it.

Mr. SHAW. I call the Examiner's attention to the exhibit which states "Date of leaving service and cause. Specify conduct, so as to convey clear understanding. March 12th, 1936. Discharged for responsibility of accident."

By Mr. SHAW:

Q. Was it your understanding that at the time you were discharged that was the sole reason you were discharged, for responsibility of that accident?

A. That was the statement Mr. Krug made, for full responsibility and speeding.

Q. Speeding does not occur on that certificate.

A. No; but it was on the slip.

Q. You don't have a copy of the slip?

A. I do not.

Trial Examiner WOOD. Have you a copy of it, Mr. Bowen?

Mr. BOWEN. I have not one here.

Trial Examiner WOOD. Could you furnish it?

Mr. BOWEN. Yes; I will do so.

By Mr. SHAW:

Q. Did you ever have a trial or investigation made to determine whether or not you were responsible for that accident?

217 A. None.

Q. Did you ever ask to have one?

A. I asked for an interview or a review before Mr. Travis.

Q. Was that granted to you?

A. That was granted.

Q. Did you at that review or talk before Mr. Travis go into the facts of the accident?

A. I outlined the accident in detail.

Q. What did Mr. Travis say?

A. Mr. Travis replied that he was not firing me for that accident but for the multiplicity of accidents in my employment.

Q. What was the date of that?

A. March 18, 1936.

Q. Mr. Sager, do you have what you call an accident rating among the drivers?

A. We have what is known as a professional rating.

Q. Do you have something like a rating of one accident for every 100,000 miles?

A. That is based upon the same thing.

Q. Does each driver know what his own frequency is?

A. Drivers are not furnished with their standing.

Q. Can you estimate how many hundred thousands of miles you have driven in your years of service with the Greyhound company?

218 A. In the neighborhood of between 450,000 and 500,000 miles.

Q. And how many accidents have you had during that time?

A. I have had only two accidents charged against me in which I was penalized prior to this one.

Q. That makes three all together?

A. Yes.

Q. What was known as a good rating among drivers?

A. If a man goes for a period of a year without scratching a fender he is considered to have accomplished something worth while.

Q. Is there any record based upon every 100,000 miles?

A. Not that I am aware of. Statistics have never been furnished us.

Q. Have you ever been told by any of the officers of the company that one accident in every 150,000 miles of driving was accepted?

A. The only statement that I can make in regard to that is that furnished by the insurance company, by Mr. Hensley. The goal of the company was one accident for every 100,000 miles.

Q. And your record has been one accident for every 150,000?

A. Based on chargeable accidents.

Trial Examiner Wood. May I interrupt. Do I understand you to mean that there were three accidents that you were

219 penalized for, but that there were others?

The Witness. Yes; but not chargeable.

By Mr. SHAW:

Q. Mr. Sager, did you conduct a campaign for safety among the drivers?

A. Yes; there has been for some period of time a divisional safety contest.

Q. And are you given medals or certificates if you are particularly safe and don't have any accidents?

A. During one period we were furnished letters for a period of six months' duration without an accident, and another period of a year without an accident, and so on. But later it developed into a yearly contest, and there was a medal awarded to the division.

Q. I hand you two letters, Mr. Sager, on the stationary of the Pacific Greyhound Line dated January 15, 1933, and July 15, 1933, carrying the seal of the Pacific Greyhound Lines, Inc., with some ribbons attached, and signed by Jones as general manager and by Mr. Krug as superintendent. I request that these be marked for identification as Board's Exhibits 31–a and 31–b.

(The letters referred to were marked "Board's Exhibits 31–a and 31–b for identification.")

By Mr. SHAW:

Q. Mr. Sager, are these letters which you received from the Pacific Greyhound Lines?

A. Yes, sir; they are.

220 Mr. SHAW. I ask that they be marked in evidence.

Trial Examiner WOOD. They may be received in evidence.

(The letters referred to were received in evidence and marked "Board's Exhibits Nos. 31–a and 31–b, Witness Sager.")

By Mr. SHAW:

Q. What did the receipt of those documents signify?

A. That a man has had no accidents during that period of time, and it is considered as a demonstration of a careful and safe driver.

Trial Examiner WOOD. Does the period of time appear?

Mr. SHAW. Not specifically, but these are six-month certificates. Obviously then the one dated July 15 would be for the six months from January to July 1933, and the other one for the six months before January 15, 1933.

221 (Tr. 221–224):

Q. This is a letter signed by J. W. Krug, superintendent, dated November 9, 1932, and directed to you. I will ask you whether you received this letter?

A. I did.

Q. Is that a letter of commendation concerning your accident record?

A. Yes, it is.

Mr. SHAW. I ask that it be admitted in evidence.

Mr. BOWEN. We object to it as incompetent, irrelevant, and immaterial. In addition to commending his driving, it appears from the

letter that his bonus has been revoked as discipline for an accident.

Trial Examiner WOOD. It may be received in evidence.

(The letter referred to was received in evidence and marked "Board's Exhibit No. 31–c, Witness Sager.")

Mr. SHAW. I will ask to have this letter marked for identification as Board's Exhibit 31–d, and this one as Board's Exhibit 31–e, these notices.

(The two documents referred to were marked "Board's Exhibits Nos. 31–d and 31–e for identification.")

By Mr. SHAW:

Q. I am handing you two notices sent to you by the president, Mr. W. E. Travis, under date of June 18, 1934, and under date of December 19, 1935, just marked for identification, and I
222 will ask you whether you received those in the course of your experience as a driver for the respondent company?

A. I did receive those letters along with bonus checks.

Mr. SHAW. I offer these in evidence.

Mr. BOWEN. No objection.

Trial Examiner WOOD. There being no objection, they may be received in evidence.

(The notices referred to were received in evidence and marked "Board's Exhibits Nos. 31–d and 31–e, Witness Sager.")

* * * * * * *

Q. Board's Exhibit 12 is a letter concerning your record and history as an employe, which is taken I suppose from the company records——

223 Mr. BOWEN. The exhibit was offered in evidence I understand but has been ruled out.

Mr. SHAW. No; it has come in over your objection.

Trial Examiner WOOD. Off the record.

(Here followed informal remarks off the record.)

By Mr. SHAW:

Q. In that particular exhibit, Mr. Sager, you are charged with three accidents which resulted in discipline. The first one occurred on April 16, 1932. The accident referred to is one that happened on Soledad Bridge. Can you explain that accident?

A. The statement that it was an oil truck was incorrect. It was a furniture truck and not an oil truck. In that particular accident I was two-thirds of the way across the bridge before the furniture truck ever appeared in sight. It came at such a speed that he came up on the bridge, and I was proceeding in either third or second gear, I don't recall which, but at a very slow rate of speed and entirely within the white line on my side of the bridge.

Trial Examiner WOOD. If I may interrupt. I am not at all interested in how that accident happened. I am only interested in what the discipline was.

Mr. SHAW. I shall confine my questions to that.

By Mr. SHAW:

Q. What discipline was meted out to you then?

A. My bonus was revoked.

224 Q. You are scheduled here with an accident on the 16th day of March 1934 in the San Francisco Terminal. Do you recall that accident?

A. I do.

Q. What discipline was given to you for that accident?

A. The same.

Q. Were you threatened with discharge after either of these two accidents?

A. No, there was no threat of discharge made.

Q. Were they ever brought up again in any statement by any of the company officers to you?

A. Not to my knowledge.

Q. Is there anything unusual in a driver being penalized for two accidents of this nature over a period of say five years?

A. No sir, nothing of importance.

Q. Were either one of those two accidents serious accidents?

229 (Tr. 229–232):

Q. Judge Lucas also states, in Board's Exhibit No. 12, that since your dismissal, the attention of a company executive has been called to an additional circumstance which would make your discharge imperative, and that there was a violation of Rule 147, which provides that accidents of any nature involving, or that might involve the company, must be personally reported in detail, and witness cards delivered by the driver in person to his superintendent or supervisor. On the 24th day of April, 1935, did you back into a parked truck and crush its left fender?

A. I did so in the rear of the Salinas depot.

Q. Did you report that?

A. I made a report to Mr. Krug that morning, furnishing him with the names of four witnesses. I made an oral report and at that time he advised me that it would not be necessary to make a written report until such time as he received a claim.

Q. Did you have any conversation with the driver of the truck that morning, that you backed into?

230 A. None whatsoever.

Q. Did you admit that it was all your fault and you did not want him to make any report to the company?

A. I did not. The driver made this statement, that he should not have been in that position in the alley.

Q. They charge you for violation of the rule that I mentioned, and the cash fare equipment violation, that you failed to put off the express shipment, and that you failed to register in and report number of passengers picked up and discharged, for which you were assessed three demerits.

A. That is correct.

Q. And for violation of the cash fare rule, five demerits were assessed.

A. Yes, sir.

Q. Did you ever have to pay for those?

A. Those demerits were excused.

Q. They were?

A. Yes; to all drivers throughout the System, except some of those that were picked up personally.

Q. And you were not one of those?

A. No, sir.

Q. This Board Exhibit No. 31-d represents an excuse for those demerits?

A. That is correct.

Q. If those violations had been serious, would they have
231 been excused.

A. That is something I could not determine. However, there were violations of a more serious character not excused.

Q. Isn't it a fact, Mr. Sager, that your record is about like anybody else's record there, if not a little bit better?

A. I consider mine a little above the average.

Q. Any driver may have a few accidents over a period of years. Isn't that correct?

A. It is rather difficult for a man to go over a period of two or three years without scratching some fenders.

Q. You have to drive through all kinds of conditions, don't you?

A. Yes; and traffic suddenly coming in.

Q. Did you understand at the time you were being discharged, that you were being discharged, not for a multiplicity of accidents, but for one accident?

A. That was my understanding at the time.

Q. Weren't you surprised to find that Mr. Travis was saying that it was not for the one accident but for the many accidents?

A. That came as quite a surprise.

Q. Had anybody ever spoken to you prior to that time saying to you, "You are having a number of accidents here. Now watch your step?"

A. I never had it called to my attention.

232 Q. If a man had a number of accidents, in order to protect the safety record of the company, wouldn't he be warned that the next accident would cause his discharge?

A. That happens in some cases, and in some cases it is partly justified.

Q. But you have never been approached in that way?

A. No, sir; I have not.

Q. Has any official of the company ever criticised your driving except for these routine accidents happening?

A. Only on one or two occasions when I was advised with regard to speeding.

Q. Is it customary to discharge bus drivers for speeding?

A. Well, if a man is arrested and receives a citation, in some cases it is.

Q. Have you ever been arrested for speeding?

A. No, sir.

234 (Tr. 234):

Q. What is the type of accident for which a man is usually discharged?

A. Gross negligence, carelessness, reckless driving, or too many accidents.

236 (Tr. 236):

Q. Just prior to the day of your accident had you been holding union meetings of the Brotherhood?

A. We held meetings. They were not made prominent, because we didn't want to put the men on the spot, but we did hold meetings of groups of men.

Q. What do you mean by not wanting to put the men on the spot?

A. Well, their association with the Brotherhood might lead to their discharge.

Q. You feared that?

A. Yes, sir.

Q. Is that feared by members of the Brotherhood generally?

A. By a good many of them. They desire to keep their membership secret.

Q. I hand to you a letter that purports to be from Mr. Meinenger, dated October 22, 1935, directed to Mr. R. C. Brown, at Los

237 Angeles, California. I ask to have it marked for identification.

(The letter referred to was marked "Board's Exhibit 32" for identification.)

Q. Now I will ask you whether the signature thereon is Mr. Meinenger's signature, to your knowledge?

A. It appears to be, in comparison with other documents we have in our file.

Q. Do you know Mr. Meinenger?

A. I do personally.

Q. Have you ever seen him sign a letter?

A. Yes; I have seen him write his name.

Q. How did you receive that document?

A. This document was sent to me—it was not sent but left in a company envelope at San Luis Obispo.

Q. It was put in the company mail box there?

A. In the drivers' mail box.

Mr. SHAW. I offer it in evidence, Mr. Examiner.

Trial Examiner WOOD. Any objection?

Mr. BOWEN. This appears to be a communication between certain officials of the Association.

Mr. SHAW. It shows how the Association was working. The only way we can find out how it was working is to have the communication before us.

Mr. BOWEN. Well, I have no objection to it.

Trial Examiner WOOD. It may be received in evidence
238 and marked "Board's Exhibit 32."

(Tr. 238-241):

By Mr. SHAW:

Q. In your talk with Mr. Travis on the 18th of March did you ask him for a further detailed account of the particular accidents he had reference to when he said you were discharged for multiple accidents?

A. I asked him as to the number of accidents which were charged against me.

Q. What did he say as to that?

A. He still stated that he did not consider this one accident, but the multiplicity of accidents; that he would not consider it further, that the matter was closed.

Q. Did you make any attempt to see him after that time?

A. I wrote a letter to Mr. Travis asking for reconsideration. Prior to that time, on March 18, Mr. Phillips, General Organizer of the Brotherhood, accompanied me to the office of Mr. Travis as my representative.

Q. Would Mr. Travis meet Mr. Phillips?

A. He would not.

Q. He would not?

A. No, sir.

Q. Did he say why?

A. No specific reason stated.

Q. And Mr. Phillips was not allowed to go into his office?

239 A. He was not allowed to go into his office.

Q. And you had to go in alone?

A. Yes, sir.

Q. Did you say you wanted him to talk to him as your representative?

A. I did, sir.

Q. And he refused to meet your representative?

A. Through his secretary, yes.

Q. Did you get an answer to your letter that you wrote to Mr. Travis?

A. I did not.

Q. I hand you copies of letters directed to Mr. Travis dated March 23, 1936, and March 28, 1936, signed by you and I will ask that they be marked for identification as Board's Exhibit 33-a and b.

(The letters referred to were marked "Board's Exhibits 33-a and 33-b for identification.")

By Mr. SHAW:

Q. I will ask you whether these are true and correct copies of letters addressed to Mr. Travis?

240 A. They are.

Q. And you never received any answers to them?

A. No replies.

Q. Did you write them at his invitation?

A. I asked Mr. Travis during this conference if I furnished a letter in writing if he would reply stating why I had been removed from service. Mr. Travis stated during the conference of March 18, 1936, that he would not answer any letter, but upon my leaving the room he told me I could write all the letters I desired, and he would be governed accordingly.

Q. Did you ever try to get another job since you lost out there?

A. I have.

Q. Have you been able to do so?

A. I have not been successful.

Q. Have you tried at many places?

A. A good many places.

Q. Did you give your Greyhound references?

A. I have, due to the fact that seven years and three months have elapsed that I was with them all that time.

Q. And in each case you were turned down?

A. In each case I was turned down.

Mr. SHAW. I now offer in evidence Board's Exhibit 33–a and b.

241 Trial Examiner WOOD. They may be received in evidence and marked "Board's Exhibits 33–a and b."

(The documents referred to were received in evidence and marked "Board's Exhibits 33–a and ss–b, Witness Sager.")

246 (Tr. 246–247): CROSS EXAMINATION

Q. As I recall your testimony you stated that the run on which you worked, left you considerable time in San Francisco, and it was during that time you devoted considerable time to organization work?

A. I devoted considerable time locally, and within close range to San Francisco.

Q. And you had signed up a great number of drivers in the Greyhound organization?

A. That is correct.

Q. Approximately how many members are there in the Brotherhood?

247 A. Approximately 135 the last time I was in close contact with it.

* * * * * * *

Q. And this lodge that you have here, is that the lodge you state you are chairman of?

A. I am, of Lodge 91.

Q. And that lodge is officered entirely by bus drivers?

A. They have a separate Local.

249 (Tr. 249):

Q. At the time you were asked to take this run when you had the accident, you had just returned to the office in the afternoon to get your pay?

A. No, sir.

Q. Isn't it a fact that you asked for it, for the run?

A. He asked me if I would not take it.

Q. And at that time you declined?

A. Yes.

Q. Did you then go out and telephone to Mrs. Sager, your wife?

A. Mrs. Sager was in my car, which was parked outside.

Q. At that time you were with Mrs. Sager?

A. Yes; we had a previous engagement.

Q. You went out and talked with her and then came back and said you would take the bus out?

A. I went out and told her I was going on the run.

Q. How long did that run take?

A. It involved some hour and thirty minutes. I left the depot at 5:30 and returned at possibly 6:40 to 6:50, or around 7 o'clock.

Q. Was the next day your regular day off?

A. No, sir; it was not.

Q. How many days before you had your day off?

A. My regular relief was not for a few days.

260 (Tr. 260–262):

Q. I show you an affidavit signed by one Charles Eldridge in relation to a collision that occurred between your bus and a Dodge delivery truck at the depot in Salinas. Will you please read that and state whether or not that correctly states the facts?

A. (Reading.) I deny that.

Q. Did you ever talk with him?

A. I had several conversations with him.

261 Q. Well, when Mr. Eldridge informed the company at the time of this accident that you asked him not to report it, is that the truth?

A. It is not the truth.

Q. You did have the accident described?

A. I did.

Q. And you did not report it?

A. I did make a report to Mr. Krug on that morning.

Q. Did you make a written report?

A. I made an oral report before four witnesses, and Mr. Krug said, "Forget about the matter until further notice."

Q. Do you know where this Charles Eldridge could have gotten your name?

A. He got my name at the time of the accident.

Q. That was on April 24, 1935?

A. That is correct.

Mr. Bowen. As part of the cross-examination of Mr. Sager, I offer this in evidence as Respondent's Exhibit 8, being a correct copy of an original affidavit by Charles Eldridge, which counsel on the other side said he would accept instead of the original.

Mr. Shaw. I object to the admission of the affidavit, not that it is a copy, but that it is hearsay and does not give me an opportunity

to cross-examine, and it is incompetent, irrelevant and immaterial.

Trial Examiner Woop. It could have no weight whatsoever.

262 Mr. Bowen. I merely present it to show that notice of the accident did come to the attention of the company.

Trial Examiner Woop. It may be received in evidence as Respondent's Exhibit 3.

(The affidavit referred to was received in evidence and marked "Respondent's Exhibit No. 3, Witness Sager.")

265 (Tr. 265):

By Mr. Bowen:

Q. Now, this accident at Salinas which is referred to in this affidavit of Mr. Eldridge, you said you reported it to Mr. Krug before witnesses?

A. That is correct.

Q. Have you the names of those witnesses?

A. I have not, but Mr. Krug signed them and put his stamp to it at his desk in San Francisco.

266 (Tr. 266-268):

Redirect examination by Mr. Shaw:

Q. Mr. Sager, at the time Mr. Travis talked to you about your discharge, did he say you were being discharged for a multi-
267 plicity of accidents or for a multiplicity of breaches of the company's rules?

A. A multiplicity of accidents, as I recall it.

Q. Did he make any mention of whether the accidents were chargeable accidents or not?

A. He did not.

Q. Was it your belief that at the time you talked to Mr. Travis you were being discharged for a multiplicity of accidents? Did you believe that was why you were being discharged?

A. No, sir.

Q. Why did you believe you were being discharged?

A. Because of my union activities.

Q. Leaving a passenger, or not abiding by the cash fare rules, would not be considered an accident, would it?

A. No, sir.

Q. So that all of these breaches of rules in the past were not the reason that led the company to discharge you, according to Mr. Travis' statement, were they?

A. No, sir.

Q. For the purpose of the record, I want to get a matter straight, Mr. Sager. As I understand it, there were three different reasons given you for your discharge. I want you to state whether I am accurate in this statement: First, you were informed by Mr. Krug at the time he handed you the unemployment quit slip that you were discharged for full responsibility of accident and speeding; second, Mr. Travis told you you were discharged for multiplicity of

268 accidents: Third, you were told on your service slip you were discharged for responsibility of accident. Have I accurately stated those three statements?

A. That is correct.

Q. So within a period of approximately three weeks you were given three different reasons why you were discharged. Is that right?

A. That is correct.

Q. At the time the unemployment slip was made out there was nothing in there about the multiplicity of accidents?

A. No, sir.

Q. And at the time the service slip was made out, which was after you talked with Mr. Travis, there was nothing in there about the multiplicity of accidents?

270 (Tr. 270):

Q. Did Mr. Travis state to you what particular accidents made up the multiplicity of accidents he talked of?

A. He did not. He made one statement that he was not firing me for the accidents but for a multiplicity of accidents.

Mr. SHAW. I think that is all.

273 Q. Are accidents judged by the result or by what might have happened?

A. On what did happen.

Q. So when you speak of serious accidents you mean serious results, and not potential results?

A. That is correct.

275 *Testimony of F. B. Lyons*

(Tr. 275-286):

Direct examination by Mr. SHAW:

Q. Mr. Lyons, are you here under subpoena?

A. I am.

Q. You did not come here of your own accord?

A. No, sir.

* * * * * * *

Q. Are you employed as a driver by the Pacific Greyhound Lines?

A. I am.

Q. How long have you been so employed?

A. A little over five years; five years and two or three months.

Q. Were you employed by the Pacific Greyhound Line in the winter of 1933?

A. I was.

Q. Do you recall about the first of September 1933 being called into Mr. Krug's office?

A. I do; yes.

Q. For what purpose were you called in there, Mr. Lyons?

276 A. I was called in and shown a paper with a list of names of Pacific Greyhound Drivers on it. I was told that there

was a petition being circulated and send in by some of the company employees.

Mr. BOWEN. May I have an objection entered that this line of testimony is incompetent, irrelevant, and immaterial.

Trial Examiner WOOD. Yes, it may be entered, and overruled.

By Mr. SHAW:

Q. Proceed, Mr. Lyons.

A. Mr. Krug asked me if I would endorse one of those three men as a representative.

Q. Did you do so?

A. I did.

Q. Were those men nominees at an election to be held?

A. They were nominees.

Q. Did you vote at the election?

A. I did not.

Q. Were you given an opportunity to vote?

A. I was.

Q. At that time were you a member of the Brotherhood?

A. I was.

Q. In December of 1933 did Mr. Krug speak to you in the depot in San Francisco, do you recall?

A. Yes, sir.

Q. Can you tell us what that conversation was?

277 A. Well, at that time Mr. Krug asked me if I had my dues paid up and I asked him what he was referring to, and he said, "Your dues in the Brotherhood."

I answered him that I had paid him.

He asked me what I hoped to obtain by joining the Brotherhood. I told him I felt that we needed some sort of representation for the drivers, and that was about the best I had run across yet.

Q. Was anything else said?

A. He told me at that time I was foolish to go into the Brotherhood because there were so many of their own members out of work at that time that if we did affiliate with the Brotherhood those men would have the right to come over and take our jobs, on account of their seniority over ours, as most of the members of the Brotherhood had many years service over those of the drivers.

Q. Did you believe that to be true?

A. I did not and told him so.

Q. Any further conversation at that time?

A. Mr. Krug also told me at that time—yes, he told me at that time that Sager was an active member in the Brotherhood, which I already knew. And he also told me that Sager had a desk in the Brotherhood office. I asked him what he meant by that. He said,

"Well, he has got a desk in the Brotherhood office, it won't 278 make much difference whether he loses his job or not."

Q. And that referred to Vincent Sager who was just on the stand?

A. Yes, sir.

Q. Do you recall talking to Mr. Krug again in San Jose around about the first of February, 1934?

A. I do.

Q. Will you give us the substance of that conversation?

A. I came in on the first loop of my run to San Jose, about 7:26 or 7:30, I am not exactly positive, and Mr. Krug was waiting to see me and asked me to step into the office. I did so. He showed me a revocation power of attorney blank, which he asked me to sign, revoking a power of attorney that I had given the Brotherhood.

* * * * * * *

Q. I will ask you whether the document I am handing you is an exact copy of the revocation handed you by Mr. Krug in the first part of February 1934?

A. That looks exactly like the one I signed.

* * * * * * *

279 Q. Did you sign that revocation?

A. Not immediately.

Q. What did you tell him when he asked you to sign it?

A. I told him I had made the statement among the drivers that I was not going to sign any papers presented to me, whether by Mr. Krug or Mr. Travis, or anyone else, and I did not feel like going back on my word.

Q. What did Mr. Krug say to that?

A. He asked me as a personal favor to sign it, saying when this matter was all blown over Mr. Travis might come to him and say, "What's the matter with a man like Lyons, that he doesn't want to support the company? What kind of a fellow is it that is working for the company?"

Q. Did you later sign it?

A. I did; yes, sir.

Q. Why did you sign it?

A. On Mr. Krug's insistence.

Q. Did you fear that if you didn't sign it, you might lose your job?

A. I didn't fear losing my job, and never have, but I thought I would lose it.

Q. And that is why you signed it?

280 A. Yes, sir.

Q. At that time there was agitation for an election among employees, wasn't there?

A. Yes, sir.

Q. Was that what he meant when he said when this matter was all cleared up and blown over?

A. I believe it was.

Q. Is that what you understood it to be?

A. Yes, sir.

Q. Did you attend a meeting held on the evening of April 19, 1934, in Oakland, California?

A. I did.

Q. How did you come to go to that meeting?

A. Mr. Krug asked me on two or three evenings previous to that, if I were going to attend, that it was my day off and he would like to have me attend if possible.

Q. And you did attend?

A. I did; yes, sir.

Q. Who were present at the meeting?

A. Oh, there were a lot of people present. The drivers and several company officials.

Q. Drivers from all over the system?

A. Drivers from the Santa Rosa Division and the Oakland Division and Division No. 4.

Q. And several company officials?

281 A. Yes, sir.

Q. Did Mr. Travis make a talk at that meeting?

A. He made quite a long talk; yes, sir.

Q. Do you remember what he said in that particular meeting?

A. I remember several things he said.

Q. I am handing you what purports to be a talk of President W. E. Travis to the drivers of the Pacific Greyhound Line at a meeting held in Oakland, California, Thursday, April 19, 1934, together with a covering letter signed by Mr. Travis and dated one day later, San Francisco, April 20, 1934. I will ask to have this marked for identification.

(The documents referred to were marked for identification "Board's Exhibit No. 35 and Board's Exhibit No. 36.")

Q. I will ask you to examine the contents of the speech of Mr. Travis, and look over the material printed in the book and tell me whether that is an exact or an approximation of an exact copy of what Mr. Travis said on that evening at that meeting?

A. As I remember, at that meeting, this is the text of it.

Mr. Bowen. Is this——

Trial Examiner Wood. Off the record.

(Here followed informal remarks off the record.)

Mr. Shaw. I offer this in evidence now, Mr. Examiner, I wish to correct the record on the indication of the exhibit. May it

282 appear that the book itself which has just been testified to by Mr. Lyons is marked as "Board's Exhibit 35" and the letter is marked "Board's Exhibit 36."

Trial Examiner Wood. Any objection?

Mr. Bowen. No, nothing but the general objection that it is incompetent, irrelevant, and immaterial.

Trial Examiner Wood. The speech may be marked "Board's Exhibit 35."

(The document referred to was received in evidence and marked "Board's Exhibit 35, Witness Lyons.")

Mr. Shaw. And the letter marked "Board's Exhibit 36" for identification is on its face a letter from President W. E. Travis to other staff members and other people connected with the Pacific Grey-

hound System. The document shows on its face its authenticity, I think, and I do not think there is any necessary for further identifying it.

Trial Examiner Wood. Any objection?

Mr. Bowen. Just the same general objection.

Trial Examiner Wood. It may be received in evidence and marked "Board's Exhibit 36."

(The letter referred to was received in evidence and marked "Board's Exhibit No. 36, Witness Lyons.")

Mr. Shaw. May I note for the record that Board's Exhibit No. 36 should be considered with Board's Exhibit 35.

Q. Do you know Mr. Fagen, Mr. Lyons?

A. Yes, sir.

283 Q. Is he a driver for the Greyhound Line, was he?

A. Yes, sir.

Q. Was he at this meeting held in Oakland on April 19?

A. He was.

Q. Did he get up and make any statement that evening that you recall?

A. Well, the only statement I remember him making was a question. He asked Mr. Travis why Vic Sager had not been allowed to attend that meeting.

Q. What did Mr. Travis say?

A. He said he issued orders that no one should be given extra time off to attend that meeting, but he also said he could see no reason why anyone could have the extra time off; that he called the meeting expecting the men able to do so who were off duty to attend.

Q. What did Fagen then say?

A. Well, Fagen said there were several drivers present who had laid off purposely to come to the meeting.

Q. What did Mr. Travis say to that?

A. He said he had no knowledge of that.

Q. Wasn't there a vote or a standing up of the men who came there that did not have a day off that day?

A. Yes. Mr. Travis asked the men to stand up who had laid off in order to come to the meeting.

Q. How many stood up?

A. I couldn't say. I would say four or five or half a

284 dozen.

Trial Examiner Wood. How many attended the meeting?

A. I really could not recall how many. I would say there were about forty-five drivers.

By Mr. Shaw:

Q. When these men stood up what did Mr. Travis say?

A. Well, Mr. Travis then said, as I recall, "Well, I must admit that you have got me balked. I did leave orders at my office that Mr. Sager was not to be granted leave."

Q. You know Mr. Sager pretty well, don't you?

A. Yes, sir.

Q. And you and he carried on a campaign in the fall of 1935 and 1936 for the Brotherhood?

A. Yes, sir.

Q. Sager said that you and he worked on your off days, which were the same days, and also mentioned that they changed your day off. Is that correct?

A. That is correct; yes, sir.

Q. Do you know when that happened?

A. It happened either the last week in November or the first week in December that I was notified. I was not directly notified of it, and I walked into the driver's room at San Jose depot and saw a bulletin posted to the effect that the off-day of the week on my run had been changed from Thursday to Wednesday.

Q. Do you know Mr. Wood?

285 A. Yes, sir.

Q. Who is he?

A. He is the agent in San Jose.

Q. He is your immediate superior there?

A. He is.

Q. Did he say anything to you about this notice?

A. Well, he asked me if I saw it, after he walked into the room when I was reading it, and I told him that I did.

Q. What did he say?

A. I asked him why that was done and he said he didn't know. I said, "Well, I could guess." He said, "Well, your first guess would probably be right. As long as you know, there is no need of my going into it, as long as you understand that I am not directly responsible for changing your day off."

* * * * * * * *

Q. It was true, wasn't it, that on your day off you and Sager had been working together?

A. That is right.

Q. And if your day off was changed you could not continue working together?

A. No, sir.

Q. And that cut down your organizing activities considerably, didn't it?

286 A. Oh, it cut down quite a bit; yes, sir.

287 (Tr. 287–290):

Q. Did you have any talk with him when you came back?

A. Well, when I came back Mr. Woods came up to me and asked me if our former conversation had been in the nature of a joke or what, and I told him that I thought it was, that he was sort of joking. And he said, "Our conversation has been overheard," and he thought it was his duty to telephone in to Mr. Krug and explain the situation to him, as he wouldn't want it to go in by any other channel and be misconstrued.

Q. Did he say anything about why the company didn't want to allow your day off?

A. Only so far as to say that I knew as well as he did that my position was none too secure at the present, and anything out of the way which I might do from now on would go doubly hard with me. In fact, he stated that he had orders to turn me in for any breach of discipline whatsoever.

Q. There has been introduced in evidence here, Mr. Lyons, an exhibit known as Board's Exhibit 28, which is headed "What does the Wagner Bill mean to employees?" Did you ever see that (showing document to witness)?

A. I have seen it, yes.

Q. When did you see it?

A. I saw that when I was on the job some time. I believe it was posted up on the bulletin board or on the wall of the
288 driver's room in San Jose.

Q. About when?

A. Well, I cannot say.

Q. Would you say the fall of 1935?

A. Along in there somewhere; yes.

Q. I hand you a document which purports to be a letter signed by a number of individuals beginning with Mr. Raymond and ending with Mr. Johnson, dated April 17, 1934, and directed to all drivers on the Pacific Greyhound Lines.

I ask that this be marked Board's Exhibit 37 for identification.

(The document referred to was marked "Board's Exhibit No. 37" for identification.)

By Mr. SHAW:

Q. I ask you whether you have ever seen this document?

A. Yes, sir.

Q. And under what conditions was it and when did you see it?

A. I saw this or a copy of it on one of the bulletin boards, I believe in the San Francisco Terminal in the drivers' room.

Mr. SHAW. I offer this document in evidence, Mr. Examiner.

Trial Examiner WOOD. Is there any objection?

Mr. BOWEN. Only the general objection.

Trial Examiner WOOD. It may be received in evidence. Perhaps you had better identify the number of sheets attached.

Mr. SHAW. There are four sheets comprising Exhibit 37.
289 Trial Examiner WOOD. Perhaps the separate sheets should be marked separately.

Mr. SHAW. They are clipped together, all but the last sheet.

Trial Examiner WOOD. Very well. It may be received in evidence and marked "Board's Exhibit No. 37."

(The document referred to was received in evidence and marked "Board's Exhibit No. 37, witness Lyons.")

By Mr. SHAW:

Q. I hand you for examination, Mr. Lyons, Board's Exhibit No. 36 and ask you to identify the groups of names appearing at the top of the first page—identifying them as to their classification. Who are the persons in the column, in the left hand column at the top?

A. The names on the left are the names of the superintendents of the various divisions on the Pacific Greyhound Lines.

Q. And who are the persons on the right?

A. They are company union representatives.

Q. On the bottom of the second page, Board's Exhibit No. 36, I find another group of names. Will you state what particular position that group of people have with the company?

A. Yes, sir; they are agents.

Q. Company agents?

A. Yes, sir.

Q. By agent you mean somebody in the capacity comparable to Mr. Wood in San Jose?

290 A. Yes, sir. Mr. Wood's name is among them.

292 (Tr. 292):

Q. Do you know of any particular cases of accidents where men have not been discharged after having them?

A. Yes, sir.

Q. Will you specify one or two of those?

A. Well, there was one about the Fourth of July. I don't know exactly what date it occurred.

By Trial Examiner Woon:

Q. Who was the driver?

A. Manning was the name.

By Mr. Shaw:

Q. Do you know the type of accident it was?

293 A. Outside of what I heard, I don't know. He was supposed to run into the rear end of a bus.

Q. After Sager's discharge you gave up your organizing campaign for the Brotherhood?

A. Yes, sir.

Q. Why did you do it?

Mr. Bowen. That is objected to as incompetent, irrelevant, and immaterial.

Trial Examiner Woon. The objection is overruled.

The Witness. I didn't see any further use in going ahead with the organization until some final disposition was made of the Sager case. In fact, there would be no use in trying to solicit membership when one of the men who had been out doing that was discharged. It was at a standstill.

294 (Tr. 294): CROSS-EXAMINATION

Q. And the revocation of the power of attorney was given for the purpose of calling that election?

A. No, sir. As I understood it, they wanted a revocation of the power of attorney of the Brotherhood so the men would drop out of it, and instead give the power of attorney to the Association.

* * * * * * *

Q. Now, you and Mr. Sager were very active in your time off in this organizing work?

A. Yes, sir.

299 *Testimony of Vincent R. Sayer (recalled)*

(Tr. 299–303:)

Direct examination by Mr. SHAW:

Q. Mr. Sager, did you go to a meeting in November 1935, held at the old studio of KTAB in the Pickwick Hotel in San Francisco?

A. I did.

300 Q. What was the purpose of that meeting?

A. Distribution of safety awards, and during that meeting——

Q. (Interrupting.) Just a moment! Who called the meeting, Mr. Sager?

A. I am not certain whether the superintendent or whether the representatives called the meeting. It was for the purpose of distributing safety awards.

Q. Was there a notice on the bulletin board?

A. Yes.

Trial Examiner WOOD. Superintendent for what?

The WITNESS. Superintendent for the Pacific Greyhound.

* * * * * * *

Q. Were you among the drivers who were awarded plaques at that particular meeting?

A. I was.

Q. What did your award of a plaque at that time signify?

301 A. A period of one year without an accident of any kind.

Q. Were you given a plaque at that meeting?

A. I was not.

* * * * * * *

Q. Were you told when you were to be given your plaque?

A. I was told they were to give them at a later date.

Q. Were you ever given a plaque?

A. No, sir.

Q. Did you ever receive a letter from Mr. Krug stating you were to be given a plaque?

A. I discussed the matter with him on the day of my discharge, and Mr. Krug stated at that time that they were being made up alphabetically.

I asked him at that time why Mr. Thompson received his, and that the S's were not distributed. He referred the matter to his secretary to take it up with Mr. Hensley with regard to the letter that was to be issued.

The plaque was due me, but I never received the letter.

* * * * * * *

302 Q. Now, do you mean to say that for one year preceding November—or whatever part of the fall this meeting was held—you were without an accident?

A. That is correct.

Q. So that, at the time you were alleged with being guilty of a multiplicity of accidents, actually for the year prior to that time, on the company's records, you hadn't any accidents against you?

A. That is correct.

Q. But you never received your letter?

A. I did not.

Q. And you asked for them?

303 A. Yes, sir.

Q. And you haven't received them yet?

A. No, sir.

Q. Now, when you were discharged by Mr. Krug, did you talk to him about your ability to prove that you weren't responsible for the accident?

A. I told him I could prove conclusively that I was not legally to blame for the accident. I also told him it would take more than that accident to make it stick.

Q. When you talked with Mr. Travis, did you tell Mr. Travis the same thing?

A. I told Mr. Travis I could definitely prove that I was not legally to blame for that accident.

Q. What did Mr. Travis say at that time?

A. I told Mr. Travis at that point I could prove it through witnesses, and Mr. Travis stated that I was withholding witnesses from the company.

I told him that I was not, that I had made no point to contact any witnesses until after I was discharged.

Q. As a matter of fact, you had furnished the company with the names of witnesses at the time of the accident?

A. I did.

304 (Tr. 304):

Cross examination by Mr. BOWEN:

Q. This plaque, Mr. Sager, you referred to, was a plaque for one year, no-accident record?

A. That's correct.

305 *Testimony of Mrs. Vincent R. Sager*

(Tr. 305-310):

Direct examination by Mr. SHAW:

Q. Mrs. Sager, you have given your name to the Reporter?

A. Yes—Ines Sager; I-n-e-s.

Q. Mrs. Sager, are you the wife of the witness who has just left the stand?

A. I am.

* * * * * * *

Q. In the Fall of 1933 were you called in to see Mr. Travis?
A. Yes, sir.
Q. Who told you to come in and see him?
A. My husband told me Mr. Travis wanted to see me.
Q. Did you go in to see him?
A. Yes, sir; I did.

* * * * * * *

309 Q. What did Mr. Travis say to you?
A. He said that he was very anxious to put across the company union, and to do so he would have to have perfect harmony. If everyone didn't work in harmony, they would have to be eliminated. I asked him if that meant that he would discharge those not in favor of a company union.
He told me that I could think as I pleased.
I said, "Well then, that is a definite threat!"
He said, "You can still think as you please."
Q. Mr. Travis is the president of the Greyhound Lines, isn't he?
A. That is right.
Q. Mrs. Sager, your husband testified that it was on, I think, October 3, 1933, when you called him and told him that you would put his clothes outside unless he kept out of the company union. Did you call him and make that statement?
A. Yes, sir; I did.
Q. How long after you made that statement, did you have the conversation with Mr. Travis?
A. The following noon.
Q. The following noon. So, it was about October 4, is that
310 right?
A. That is right.
Q. Did you ever have any more conferences with Mr. Travis?
A. That was all.
311 (Tr. 311):
Q. Did you deliver the package to Mr. Jones that the Brotherhood of Locomotive Firemen and Enginemen Drivers sent to him?
A. Yes, sir; I did.
Q. Did he know who you were?
A. Yes, he did.
Q. He knew you were the wife of Mr. Sager?
A. Yes, sir.

313 *Testimony of Warren Macy.*

(Tr. 313-14):

DIRECT EXAMINATION

Q. You are here under subpoena?
A. Yes, sir.
Q. Are you an employe of the Pennsylvania Greyhound Lines?
A. No, sir. The Pacific Greyhound.

Q. I mean, the Pacific Greyhound Lines, here.

A. Yes, sir.

Q. How long have you been an employe of that line?

A. Since March of '23, I believe.

Q. 1923?

A. Yes, sir.

Q. Were you an employe there in the Fall of 1933?

A. Yes.

Q. Do you recall a meeting held in Los Angeles in the clubrooms of the terminal there, to which Mr. Travis spoke in the Fall of 1933?

A. Yes.

Q. At that time were you a member of the Brotherhood?

314 A. I had signed up; yes.

Q. Yes. Did you go to this meeting held in the clubroom in Los Angeles?

A. Yes.

Q. How did you come to go to that meeting? Do you recall?

A. Well, I was very much interested in the subject, and made it a point to attend all those meetings I could.

Q. Well, what was the subject of the meeting?

A. Organization.

Q. Organization of what?

A. Organization of the Greyhound drivers.

Q. Was there a notice on the bulletin board for you to attend, or what?

A. Just a notice on the bulletin board, of the meeting.

Q. Did you know Mr. Travis was going to speak to you?

A. I had heard he was.

315 (Tr. 315-332):

By Mr. SHAW:

Q. Later on that Fall, did you talk to Mr. Travis in Mr. Hodge's office in Los Angeles?

A. Not in Mr. Hodge's office. It was at Shop.

* * * * * * *

316 Q. Did you talk to Mr. Travis then?

A. Yes.

* * * * * * *

317 Q. Did Mr. Hodge talk to you around about this time about joining the company union?

A. I had two conversations with him. When it first came out, he met me when I first came into the depot, and asked me if I had signed up.

I told him that I had.

He told me, of course, that that was my privilege to do as I thought best. Then, he told me to remember that I had been there a good while, and had built up a lot of seniority. The second time——

Q. (Interrupting.) Well, what did that imply to you? The statement doesn't mean very much as it stands.

A. That I had seniority? It implied to me that if I went ahead with that, I took the chance of losing it.

Q. You might lose your seniority, or you might lose your job?

A. My job.

Q. Proceed.

A. The second time I was called to the office—that was some time later—he had the company union papers there to sign. He wanted to know if I wanted to sign them, that he had contacted all but seven or eight men, that he wanted to get them lined up on the company as much as he could, and give Mr. Travis a chance to see what he could do for it.

Trial Examiner Wood. About what date was that, that you were called to the office, and saw the company union application?

318 The Witness. I can't remember the dates.

Trial Examiner Wood. Approximate?

The Witness. Oh, as near as I can remember, it would be along in August or September; perhaps September.

By Mr. Shaw:

Q. 1938?

A. Yes.

Q. Did Mr. Christofferson talk to you about joining the company union about this time?

A. Yes.

Mr. Shaw. Had you finished your questions, Mr. Examiner?

Trial Examiner Wood. Yes.

By Mr. Shaw:

Q. Who was Mr. Christofferson?

A. Supervisor, I believe, is his rating; Driver Supervisor.

Q. What did he say to you about it?

A. He had the papers—those same papers—of the company union constitution, and the power of attorney, and the deduction order there.

He wanted to know if I didn't want to sign those, in order to get the thing finished up so that Mr. Travis could go ahead to deal with the company union.

Q. Did you sign?

A. No.

Q. Mr. Macy, you haven't stated who Mr. Hodge is.

A. He is our General Manager at Los Angeles.

Q. Mr. Christofferson is under him, is that correct?

A. That is right.

319 Q. Did you talk to Mr. Earl Hensley about this time about joining the company union?

A. Yes.

Q. Who is Mr. Hensley?

A. He is with the insurance department. I don't know his title.

Q. He has his office in San Francisco? Is that right?

A. That is right.

Q. Where did you talk to him?

A. He met up with me at the depot after I had just pulled into it from a run, and he wanted to know if I was going to the shop. He wanted to ride down with me.

Q. What depot was that?

A. The depot at Sixth and Los Angeles.

So, he rode to the shop with me, and we talked from the depot to the shop. Then we stopped there in the car after we got to the shop for, perhaps, forty-five minutes.

Q. And what did he say to you?

A. He told me that the company had approached him on the subject, and that he was [pause] his judgment would be guided by how it affected the drivers.

He told me that they had showed him the constitution, and that he had analyzed it from a legal standpoint for his own satisfaction, and thought it was perfect.

Q. As a matter of fact, he was in a supervisory capacity over
320 you, wasn't he?

A. Well, when we have an accident he is; yes.

Q. He is the man who determines whether you are at fault, isn't he?

A. I think so, largely.

Q. But he told you he was just another employe trying to find out how you felt about it, is that correct?

* * * * * * * *

The WITNESS. Yes.

By Mr. SHAW:

Q. Now, you have been active in organizing the Brotherhood in the Los Angeles area recently, haven't you?

A. Yes.

Q. When did this activity begin down there?

A. Do you mean——

Q. (Interrupting.) The recent activity.

A. The recent activity started in July?

Q. Of 1935?

A. '35.

Q. Were you working in close cooperation with Mr. Sager up here?

A. Yes.

321 Q. You were corresponding with him?

A. I would see him almost every trip in San Luis Obispo.

Q. Oh, you met at San Luis Obispo?

A. Yes.

Q. Was Mr. Kenney active with you down there at the time?

A. Yes, he was.

Q. What did your activity consist of?

A. Going around talking to the drivers on organization, trying to show them what the Brotherhood had to offer us. If they could see it our way, we would give them an application and have them sign it.

Q. Did Kenney get a number of these applications to sign?

A. Yes, he did.

Q. Would you say that he was your closest Lieutenant in the movement there?

A. Yes, I think that he was about the most active.

Q. You are a man of considerable seniority there at Los Angeles, aren't you?

A. My seniority is quite high, yes.

Q. You have a very fine accident record, haven't you?

A. I have a good accident record, yes.

Q. Practically no disciplinary action has been taken against you for a long time, is that right?

A. That is right.

Q. Kenney is now discharged, isn't he?

A. Yes.

822 Q. Do you recall last Fall when Mr. Jones was the General Manager of the company, of speaking to the men in the club-room at Sixth and Los Angeles Streets?

A. Yes.

Q. What did Mr. Jones say at that meeting?

A. He first discussed some of the working conditions, and then he told us that he was going to speak to us two ways: He was going to speak to us officially, and unofficially.

Q. What did he say officially?

A. He said we could join any damn union we wanted to; that he didn't have a dime in it, and never did have.

Q. Didn't have a dime in what?

A. Greyhound stock.

Q. What did he say unofficially?

A. He told us he didn't think—first he told us that Mr. Travis had always been opposed to organized labor; had never dealt with it; and that he said he would step out of the President's chair—previously he said that—he would step out of the President's chair, rather than to write a contract with the Brotherhood.

He told us then that he didn't think that we would ever get any benefits by being a member of any labor organization.

Q. He didn't confine that merely to Brotherhoods, did he?

A. Not that last remark.

823 Mr. Bowen. When was this conversation, Mr. Shaw?

Mr. Shaw. This was in the Fall of 1935; last Fall.

Trial Examiner Wood. Just when, in the Fall of 1935, do you recall?

The Witness. No, I don't. It was [pause]——

Trial Examiner Wood (interrupting.) Well, can you specify a little more precisely than just the Fall of 1935?

824 The WITNESS. I would say it was the late Fall.

Trial Examiner WOOD. November, December?

The WITNESS. As near as I can remember.

By Mr. SHAW:

Q. That was held in the clubrooms at the terminal at Sixth and Los Angeles Streets, wasn't it?

A. That is right.

Q. Now, are you a member of the company drivers' association or company union?

A. Yes.

Q. Do you recall going to a meeting held in the same room last Fall which was called by the company union to discuss working conditions?

A. Yes.

* * * * * * * *

825 Q. About August or September, is that what you would say?

A. I would say so.

Q. Is it true that about the time this meeting was held the company was instituting a new policy of setting up, what was called, the Guarantee Board?

A. That is the meeting I have in mind.

Q. Would you discuss what is meant by the Guarantee Board?

A. Well, the Guarantee Board is a part of the Extra Board. That means, the men who are not holding regular runs. They do all the extra, pull the extra schedules and overloads and emergency runs.

The Extra Board is composed of the Guarantee Board and the On Call Board.

The Guarantee Board are the older men—twelve, I believe—that work on a guarantee of so much a month; and the way it sets up, are entitled to all the extra work providing they have the proper rest. Where the Guarantee men are short of rest, the On Call men are called in, then, to take up the work that the Guarantee men can't handle.

826 Q. Now, Mr. Macy, prior to this meeting, there had been no difference between Guarantee men and On Call men as far as the men on the Extra Board were concerned, had there?

A. No.

Q. They had all been on the Extra Board, is that correct?

A. That is correct.

Q. And the rule was "First In—First Out"?

A. That is right.

Q. And this rule would operate so that the "First In—First Out" doctrine was cut down to give preference to these twelve men on the Guarantee Board. Is that the correct statement of it?

A. That is right. The Guarantee Board worked within itself—"First In—First Out," as long as they could handle the work.

Q. That would result in dull times, would it not, to the Guarantee men getting all the work, and the men on the On Call Board being deprived of their opportunity to work as they had been under the "First In—First Out" doctrine?

A. When work is slack, yes.

Q. The company proposed this doctrine of the Guarantee Board at this company union meeting held last Summer or last Fall that you speak of?

A. That was my understanding.

Q. How did you come to go to the meeting?

A. I tried to attend all those meetings that are held when I
327 am home.

Q. There was a notice on the meeting board, was there?

A. Yes.

Q. Who signed the notice, do you recall?

A. I wouldn't say.

Q. You don't know who called the meeting?

A. I think it was called by Mr. Hahn.

Q. Mr. Hahn is the representative, is he?

A. Yes.

Q. Who were present at the meeting outside of the drivers?

A. Mr. Hodge was there, and I think the only other outsiders—that is, non-driver—was the secretary that took down the minutes of the meeting.

Q. The secretary who takes down the minutes of the meeting, what is his name?

A. Mr. Hugh Miller.

Q. Mr. Miller?

A. Yes.

Q. Who is Mr. Miller?

A. He is the dispatcher, and I don't know what else. He takes down meetings in shorthand.

Q. He is the personal secretary to Mr. Hodge, too, isn't he?

A. I couldn't say.

Q. Is he in Mr. Hodge's office?

328 A. Well, he is, part of the time, I believe, and in the dispatcher's office.

Q. Well, he has a supervisory job has he? He is not a driver, is he?

A. No, sir.

Q. He is not entitled to membership in the Drivers' Association, is he?

A. No.

Q. He always takes down the minutes of the meetings in shorthand?

A. He is the only one that ever has taken any down, to my knowledge.

Q. And everything that is said in that meeting goes down in those notes, doesn't it?

A. Supposedly.

Q. Did Mr. Hodge present this plan of the company to the meeting that night?

A. Yes.

Q. What was the reaction of the men?

A. The regular men didn't take much of an attitude either way. The extra men were opposed to it. The majority of men were opposed to it.

Q. Did any of them get up and speak about the plan?

A. Yes; there was several got up and opposed it.

Q. Do you recall Mr. Hoffman getting up?

A. Yes.

329 Q. What did Mr. Hoffman say?

A. He opposed the system, and finally ended up by asking if it couldn't be brought to a vote of the drivers, so for them to determine which way it would go.

Q. And what did Mr. Hodge say to that?

A. He told us that if Mr. Travis wanted it to go that way, it would go that way, regardless of all the voting the drivers did at the meeting there.

Q. And this was a company union meeting called for the purpose of discussing working conditions, wasn't it?

A. Yes.

Q. Was there a vote ever taken?

A. No.

Q. Was the plan adopted?

A. Yes.

Q. It is now in effect?

A. Yes.

Q. Now, is it true that among the drivers—that is, those in the Los Angeles area, which is Division No. 3—that among those drivers, there are certain grievances that the drivers have?

A. Yes.

Q. Are these grievances of long-standing nature that have never yet been settled?

A. Some of them are.

* * * * * *

330 Q. Will you discuss what some of these grievances are, Mr. Macy?

A. There is lots of complaint on protection time, for time men spend at the depot, or some outside the depot, where they have to wait, protecting schedule after schedule, for a run without pay; and then, after they have been protecting for some time—perhaps, 331 several hours—then, they have to go out on a run. The only pay they would get is the pay for the mileage that they make on the bus.

Q. Well now, that is a grievance that affects almost every driver, isn't it?

A. On the Extra Board.

Q. On the Extra Board?

A. Yes.

Q. Do you know whether that has been brought to the attention of the company representatives, or the company union representatives?

A. Yes; it has.

Q. Has anything ever been done about it?

A. No remedy that I know of. It has been discussed at the drivers' meetings; and that one discussion, I remember, our representative—Mr. Hahn—was arguing that with Mr. Hodge, and whether this plan was working or not.

Mr. Hodge said he wasn't working—I mean, Mr. Hahn said, "Well, in the eyes of the law, I claim they were working."

Mr. Hodge said they were not working. They are either up in the clubroom, reading some magazine, or else, down in some bookie playing the horses, but they are not working.

Q. What is your understanding, and the men's understanding, of what happens when you are turned down in your application for redress of grievances? You ask the company for something, and they refuse. What can you men do about it under your Drivers'
332 Association?

A. Don't do anything about it.

Q. It stops right there, does it?

A. Sure.

333 (Tr. 333-335):

By Mr. SHAW:

Q. Do you recall the grievance over the overtime clause in the agreement?

A. In the constitution? I mean in the working agreement of the company union?

Q. Yes.

A. Yes; there has been lots of talk of the unfairness of that.

Q. Well, would you discuss what the rule is, and what the talk has been?

A. Part of the complaint is that, if your schedule is late—I mean if you are detained on the road through any emergency work—a flat tire, or anything of the kind—you can work two hours, which goes just as part of your trip. The third hour your overtime starts, and amounts to fifty cents an hour.

There has been lots of kick on that.

Q. Well, do you know if it has ever been taken up through the company association channels?

A. I don't know if there has been anything about it. I haven't heard much about it. They took it as a matter of course.

Q. Did you ever talk to your representative about that
334 complaint?

A. I told Raymond when he was in there, that I thought it was a joke.

Q. What did Mr. Raymond say?

A. He told us that that was put in for the idea, if the men drew overtime up close to their regular arriving time, it would make the men inclined to loiter on the road and come in late to draw overtime.

Q. Did he ever take it up, to your knowledge?

A. I don't know if he did or not.

Q. Nothing has ever been done about it?

A. Not that I know of.

Q. How often does the company union meet down there in Los Angeles?

A. No regularity; just whenever there is a meeting called.

Q. There is supposed to be a meeting every month, isn't there?

A. That is right.

Q. But it isn't called that often?

A. No.

Q. Is it your understanding that the constitution can only be amended by a two-thirds vote of the members?

A. Yes.

Q. Do you know if there have been any amendments to the constitution recently that have not been accomplished that way?

A. I haven't read the constitution. Gussie Marten told me
335 that the representatives had made some minor amendments that were so trivial that they didn't consider it necessary to take before all the men, so they did it themselves.

Q. Who is Gussie Marten?

A. He is the representative of the company union in San Francisco.

337 (Tr. 337–339):

By Mr. SHAW:

Q. Are you acquainted pretty much with the recent causes of discharges down there, in Los Angeles? Do you know why the fellows are fired down there, the common knowledge of why drivers are discharged?

A. Oh, I think so.

Q. In all of your experience, do you know of where a driver has been discharged while carrying company mail beyond its destination, or losing it?

A. I know Camy's case.

Q. Do you know of any other case besides Camy's?

A. I don't have any in mind; no.

Q. Freight, letters, and mail are constantly being misplaced and lost in the course of the driver's experience, aren't they?

A. We have quite a little of that, yes.

Q. Do you recall any articles recently that have been lost, and nobody has been seriously reprimanded for?

A. There was a piece of oil-well equipment that went up and down the coast. I mean, it went from San Francisco north, and I don't know how far; and my understanding is, that when it came back, that there was a lot of inquiry after. I think it was gone for about

three days before it was located. If there was any penalizing done for that, I never heard of it.

Q. That was a very valuable article, too, wasn't it?

A. Yes.

Q. Wasn't there great delay on that?

338 A. I was told, if it wasn't located within a certain time, it was going to cost the company some amount every day.

Q. Well, very much money?

A. The figure I had heard was that it was going to cost them a thousand dollars.

Q. And the driver who was responsible for that, to your knowledge, has not be reprimanded. Is that correct?

A. Not that I know of.

Q. Well, is it the custom, when a piece of freight is lost, the driver pays for it? Is that the usual custom?

A. That is the way it is settled sometimes.

Q. You say "sometimes." What other method of settlement is used?

A. Well, I think sometimes it is just skipped.

Q. Nothing is done about it, you mean?

A. That is right.

Q. Sometimes, the men pay for it. Do they get demerits sometimes, for it?

A. Yes.

Q. Do you know of men getting discharged for losing a

339 piece of freight?

A. I don't know of any case besides Camy's case.

342 (Tr. 342–343):

Cross-examination by Mr. BOWEN:

Q. Now, this meeting that you had, relative to the so-called extra men—you stated that you were not particularly concerned with it. The reason that you were not particularly concerned with it was because you had seniority rights of your own that were not affected?

A. That is not the reason I wasn't particularly interested? Will you ask that again?

* * * * * * * *

343 Q. You stated the reason you were not interested in it was because you had seniority rights of your own that were not affected by this discussion?

A. I had two very definite reasons: One was that it didn't directly affect my work; the other was that I didn't consider that we had anything we could do one way or the other about it, because we were going to abide by whatever they wanted to give us. We had no way of contesting it in any other way.

344 (Tr. 344–345):

By Mr. BOWEN:

Q. Mr. Macy, I am informed that Mr. Hugh Miller is not the regularly elected secretary of the Drivers' organization, but that

he merely acts as a secretary, as agreed upon between the employer and the employe, to take minutes. Did you know that that was the situation?

A. He takes the minutes of all the meetings, the drivers' union meetings, as well as any other.

Q. Well, he is brought in, whatever he is, at the request of the drivers? He is not a regularly elected secretary? Did you understand that to be a fact?

345 A. To my knowledge, he has never been requested by the drivers.

347 (Tr. 347):

Q. You don't mean to testify, Mr. Macy, that it is a regular thing to misplace, or to lose express and mail?

A. Not a regular thing. I mean, there is considerable stuff that doesn't show on the schedule it starts on. Recently, our checks in Los Angeles came in a day late on account they had turned out a car, I believe—a car failure on the road, that these checks were on; and in changing the cars those checks were lost, but when the driver came into Los Angeles with a waybill showing that he didn't know anything about where they were—he had no idea where they were.

As I remember, they came in from 24 to 36 hours late.

348 (Tr. 348):

Q. Now, who was the driver that lost this oil-well equipment who you said was not disciplined?

A. I am not sure. I heard it was a man by the name of Burnham. I can't say that that was the man.

Q. How did you spell his name?

A. B-u-r-n-h-a-m, I think.

350 (Tr. 350-352):

REDIRECT EXAMINATION

Q. Now, you mentioned something about arbitration provisions here in the company union agreement—Drivers' Association agreement. Do you know whether that arbitration provision has

351 ever been used in the three years?

A. It has not.

Q. Nobody has ever taken anything to arbitration?

A. No. I might—I could say that there is another provision in there that says that the power of decisions shall rest with the President of the company, which has put all idea of any further action out of the heads of the drivers.

* * * * * * *

Q. Well, do you know of any who have been in any accidents at all? Are you familiar with any accidents at all?

A. I know of two accidents, quite recently, that are minor.

Q. What kind of accidents were they?

352 A. Both rear-end accidents.

Q. Do you mean where the bus has run into somebody in front of it?

A. Yes.

Q. Do you know what has happened to the men who were the drivers in the buses at that time? What disciplinary action was taken against them?

A. I was told they were both demerited.

Q. Neither one of them were discharged, were they?

A. No.

Q. Do you——— Mr. Dyer?

A. Yes.

Q. He had an accident, did he?

A. Yes.

Q. Is he one of the two you speak about?

A. Yes.

Q. Is he very active in the company union? He is, isn't he?

A. Yes; is very much a company union man.

Q. And he just got some demerits, didn't he?

A. Yes.

Q. Still working for the company?

A. Yes.

353 (Tr. 358):

Q. Well, is there any bulletin stating what you will be discharged for, if you know?

A. Not that I know of.

Q. Well, do you know of any bulletins stating that for a rear-end collision a man shall be discharged?

A. No.

Q. Has it been a policy to discharge men for rear-end collisions, that you know of?

A. Not an established rule; no; not that I know of.

359 (Tr. 359):

Examination by Trial Examiner Wood:

Q. This Jones' meeting, at which he used the words unofficial and official, you stated that it had taken place in July of last year?

A. I stated it took place back since July. The reason I say that is because I know that it happened since this—[pause].

Q. Was it after July 5, 1935?

A. Yes; it was after that date.

360 (Tr. 360):

Q. And have you attended a company union meeting lately?

A. We haven't had any lately, to my knowledge.

Q. When was the last one that you know took place?

A. I attended the last one they had.

Q. When was that?

A. I can't remember the dates. It seems to me it was along about April or May of this year.

Q. About how many attended that meeting?
A. How many drivers attended the meeting?
Q. Yes.
A. Just roughly, it would be 14 to 20 men.

863 *Testimony of Henry A. Camy*

DIRECT EXAMINATION

(Tr. 863):
Q. Have you got a job now, Mr. Camy?
A. I have not.
Q. How long did you work?
A. May the Sixth.
Q. Where did you work prior to May 6th, 1936?
A. Pacific Greyhound.
Q. Are you the Camy who is one of the complainants in this case?
A. I am.
Q. How long did you work for the Pacific Greyhound Lines, Mr. Camy?
A. Since 1930.

865 (Tr. 865–873:)
Q. Do you recall that on or about October 13, 1933, you had a conversation with Mr. Hodge at Goshen Junction, concerning the Brotherhood?

866 A. I do.
Q. Will you give us the substance of that conversation?

Mr. Bowen. That is objected to on the grounds that it is incompetent, irrelevant, and immaterial. I ask that all this testimony be taken under that objection.

Trial Examiner Wood. Overruled. The witness may answer.

The Witness. Well, while I was loading express there at Goshen Junction——

By Mr. Shaw:
Q. What is that?
A. While I was loading express at Goshen Junction, he came to me and asked me if I had joined the Brotherhood. I told him I had, and he asked me what good it was going to do me, what benefit I would have by it?

I didn't say anything. So, a couple of days after that he came to Fresno on my day off there, and called me up at my mother's home. He told me he wanted to see me down at the depot. So I went down to the depot, and he said he had a paper he wanted me to sign. So I signed it.

Q. I hand you Board's Exhibit No. 19, which purports to be a revocation of an authority to the Brotherhood, and ask if this is the paper which you were asked to sign by Mr. Hodge?
A. [Examining exhibit.] That is it.

Q. Is that the paper he asked you to sign?
A. [Examining exhibit.] That is it.
Q. He asked you, therefore, to withdraw your authorization
367 from the Brotherhood?
A. Yes, sir.
Q. Did you sign it?
A. Yes, sir.
Q. Why did you sign it?
A. Well, I figured that if I wanted to hold my job I had better sign it.
Q. Did you actually resign from the Brotherhood at that time?
A. Yes; I did at that time.
Q. You got out entirely?
A. Yes, sir.
Q. Did you join the company association, the company union?
A. Yes, sir.
Trial Examiner Wood. Just when was this?
Mr. Shaw. The Fall of 1933, he testified.
Trial Examiner Wood. Yes, I realize that; but I wonder if we couldn't specify a little more exactly than the Fall of 1933?
Mr. Shaw. It was asked on or about October 13, 1933, when these conversations occurred.
Trial Examiner Wood. Yes.
By Mr. Shaw:
Q. When did you join the Brotherhood?
A. In '33.
Q. Well, about when in 1933?
A. (Pause.)
Q. Approximately.
368 A. September, I believe.
Q. It was prior to this conversation with Mr. Hodge?
A. Yes.
Q. It must have been; yes.
When did you resign, do you remember?
A. You mean in October? Sometime in October.
Q. Shortly after this conversation with Mr. Hodge, was it?
A. Yes, sir.
* * * * * * *
Q. Did you join the Brotherhood at any later time?
A. Yes, sir; I did.
Q. When was that?
A. 1935.
Q. When in 1935?
A. I don't remember the date.
Q. Well, about when? Can you say?
A. (Pause.)
Q. Was it in the Fall or the Spring?
A. I think it was in the Fall.

Q. Was it about October, November, or when?

A. Somewhere along in there.

Q. Would you say it was about November?

369 A. Either October or November; I couldn't definitely say.

Q. Of 1935?

A. Yes.

Q. Why did you join the union again at that time?

A. Well, I had figured it was a good thing; that this company union didn't seem to do any good; didn't help us out any, so I figured I would join something that would protect the working man.

Q. Did you begin to taken an active part in the organization after you joined?

A. I did.

Q. What did your activity consist of?

A. Well, talking with the boys, trying to get them to join. If they talked favorably, why, I would get a blank for them.

Q. Did you sign up some of them?

A. I did.

Q. And you passed along a number of blanks?

A. I did.

Q. Those are application blanks, I take it?

A. Application blanks.

Q. How long did this activity continue from the time you joined the union in November of 1935—October or November?

A. Until I quit, or was let out by Mr. Hodge.

Q. When were you discharged?

A. May 6th, 1936.

370 Q. Were you particularly active around about the first of May?

A. I was.

Q. Did you call on the men at their houses?

A. No; just up in the dormitory when they were up at the other end.

Q. At Fresno, you mean?

A. Yes.

Q. And you carried these blanks with you all the time, did you?

A. No; I didn't. I would get one from someone, and I would take it up there whenever I had a prospect.

Q. I see. Were you getting a dollar apiece for these, too?

A. No, sir.

Q. You weren't getting any money?

A. No, sir.

Q. But you thought that the men needed an organization, did you?

A. Yes, sir.

Q. Did you lose a piece of freight on or about March 7, 1936?

A. Yes, sir.

Q. Will you tell us the story of how it happened?

A. Well, it was left on a fender of the bus at Plaza Junction, and when I got to Fresno, why, it was missing. So, I had the agent

phone back to Visalia to have a duplicate made, and it was sent down.

371 Q. How did it come to be left on a fender, Mr. Camy?

A. Well, there was a connection there from Hanford and he had a lot of baggage and express, and I also had express for the Hanford bus. So, when I came out, I grabbed the wrong piece. I grabbed two pieces of express out of the bus, and I got out there, and I seen there was only one for Hanford, and the other was going to Fresno. So, I had laid it on the fender there. I had a student driver with me, and he put the baggage inside the baggage rack, and left this piece out.

I didn't miss it until I got to Fresno.

Q. Did you direct the student driver to pick up this particular piece of baggage and put it on the bus?

A. No; I did not.

Q. When you have a student driver along, it is about as confusing as it can be, I can imagine, isn't it?

A. It is worse.

Q. You are supposed to be instructing him at the same time you are driving?

A. Yes, sir.

Q. You were called in after this trouble, weren't you, and disciplined for it?

A. Yes, sir.

Q. Well, now how did that happen? What took place in the form of discipline

A. Well, he told me that I would have to pay for it, and
372 handed me a piece of paper to keep out of my wages, and wanted me to sign it.

Q. And did you pay for it?

A. Yes, sir.

Q. Did you think that was the end of it?

A. Yes, sir.

Q. Is it customary to give a man demerits in such a case?

A. Yes, sir.

Q. Where it is customary to have him pay for it?

A. It is customary to get demerits.

Q. And no demerits were given you?

A. No, sir.

* * * * * * *

Q. Did you have a perfect record up to that time?

A. I think I did, yes.

* * * * * * *

373 The Witness. Yes; I guess it was.

By Mr. Shaw:

Q. In other words, if the thing had been very serious you certainly would have received demerits, wouldn't you?

A. Yes, sir; I would have.

374 (Tr. 374-381):

Q. And no demerits were loaded against you, were they?

A. No, sir.

Mr. SHAW. Will you mark this as Board's Exhibit next in order?

(The document referred to was marked as "Board's Exhibit No. 41 for identification.")

By Mr. SHAW:

Q. I hand you, Mr. Camy, Board's Exhibit No. 41 for identification, which purports to be a note directed to you, and signed by J. H. Hodge, dated March 11, 1936, at Los Angeles, California, and ask you if this is a copy—if this is the original of the letter received by you from Mr. Hodge concerning this loss of freight?

A. [Examining exhibit.] Yes, it is.

Mr. SHAW. I offer this as Board's Exhibit 41 for identification in evidence.

Trial Examiner WOOD. Is there any objection, counsel?

375 Mr. BOWEN. No.

Trial Examiner WOOD. Board's Exhibit No. 41 is received.

(The letter referred to was received in evidence and marked "Board's Exhibit No. 41, Witness Camy.")

By Mr. SHAW:

Q. Did you consider that you were disciplined in that case, Mr. Camy, or did you consider that your payment of the money had been substituted for disciplinary action?

A. That is what I thought.

Q. You thought that your payment of $10 cleaned it all up, is that correct?

A. Yes, sir.

Q. It is true, isn't it, that in some cases where men leave goods behind that they aren't given an opportunity of paying for them, but they have to take it off of their bonus? Is that correct?

A. Yes, sir.

Q. That is, there are alternative methods. The company can do one or another thing, give you demerits, or have you pay for it?

A. That is right.

Q. Does that depend upon the seriousness of the violation of the rule?

A. What is that?

Q. Does that depend upon the seriousness of the violation of the rule?

376 A. I suppose it does.

Q. In other words, if it is very serious, you are forced to take a demerit, is that correct?

A. Yes, sir.

Q. You had a very good accident record there, didn't you, Mr. Camy?

A. I think so, yes.

Mr. SHAW. Will you mark this for identification as Board's No. 42?

(The letter referred to was marked "Board's Exhibit No. 42 for identification.")

By Mr. SHAW:

Q. I hand you Board's Exhibit No. 42 for identification, which purports to be a letter from Earl Hensley, supervisor, Safety and Insurance, dated March 25, 1936, and directed to Driver Henry A. Camy of Division 3, and ask you whether you received this document from Mr. Hensley?

A. (Examining exhibit.) Yes, sir; I did.

Mr. BOWEN. No objection.

Mr. SHAW. I offer Board's Exhibit No. 42 in evidence.

Trial Examiner WOOD. Board's Exhibit No. 42 is received in evidence.

(The letter referred to was received in evidence and marked "Board's Exhibit No. 42," Witness Camy.)

By Mr. SHAW:

Q. Was anything else ever said to you about this loss of freight after you paid for it?

377 A. No, sir.

Q. You had forgotten all about it, had you?

A. Yes, sir.

Q. What happened to you on May 2, 1936, in your driving?

A. On May 2? I was supposed to have lost a letter, I guess.

Q. You were supposed to have lost a letter?

A. That the company mailed. It was express, a valuable package.

Q. It was a valuable package?

A. That is what it had on it—"V. P. L."

Q. Was it a letter or a package?

A. It was a letter.

Q. A letter. Where was the letter going?

A. San Francisco, so Mr. Hodge said.

Q. Do you recall the letter itself?

A. I do not.

Q. You do not?

A. No, sir.

Q. You don't know yourself whether it was a valuable package or not, do you?

A. No, sir.

Q. Will you explain how you came to lose this piece of company mail?

A. Well, I had quite of few pieces of express and baggage for Taft, and the agent came out there, and I handed him my

378 board, and told him to sign it.

Q. Now, just a minute! Excuse me. I want to get this clear for the record. As I understand it you were driving between Los Angeles and Fresno?

A. Yes, sir.

Q. Fresno is directly north of Los Angeles on the way to San Francisco?

A. Yes, sir.

Q. Taft is a small town?

A. Yes, sir.

Q. Off the main line?

A. Yes, sir.

Q. And connected to the main line by an independent bus line, is that correct?

A. Yes, sir.

Q. What town does the Taft line connect with the main Fresno line?

A. Well, we connect up there from Los Angeles at Greenfield Corners.

Q. Greenfield Corners?

A. Yes.

Q. I see. Now, you can tell us what happened at Greenfield Corners when you were making a transfer of your baggage at Taft,
379 if you will.

A. Yes, sir. I gave this agent my board and told him to sign up while I was undoing the ropes, and got the canvas back, and when he had done that he came back there and I handed him the baggage and express, and looked around. There wasn't any more, and I said, "Is that all?"

He said, "That checks."

I said, "All right."

So, he started taking the stuff over to the station. I tied the ropes up, got in my bus, and left. I didn't know that I had lost it until I got back three days later to Los Angeles.

Q. Well now, were you given any container to carry this mail in, or anything of the sort?

A. No, sir.

Q. Where did you have to carry it?

A. In your clipboard or there is a little tray on the radiator that you can put your mail in there, and anyone can come along and pick it up, or the wind can blow it off when you have your windows open, and you wouldn't notice it at night.

Q. But you have no place that you can lock up, or close, to carry this mail in?

A. No, sir.

Q. You said that the agent checked your records. What do you mean by he checked them?

380 A. Well, he checked against the pieces of express that I delivered to him there on the waybill.

Q. Now, did he also check these materials on the clipboard?

A. No.

Q. He was supposed to check the materials on the clipboard, which were waybills, with the express; is that right? Did the way-

bills come along with the clipboard? Did you carry them with the mail?

A. Yes, sir.

Q. And you understood, his job was to check the waybills on the clipboard with the freight?

A. That is it.

Q. Did you keep any list of the mail that you brought up from Los Angeles? Was there any list kept of it?

A. Just on this waybill.

Q. Was the mail listed on the waybill?

A. I suppose it was.

Q. Is it ordinarily listed on the waybill?

A. Yes; it is.

Q. Is it the job of the agent to do this inspection? Is that his job?

A. When you deliver express, why, he has to check against you, the number on his waybill.

Trial Examiner Wood. Was this particular letter listed on any particular waybill that you were carrying that night?

381 The Witness. I couldn't tell you. It was supposed to have been.

Trial Examiner Wood. When he checked off, did he check off from reports that you had in your hands and continued on with, checking for baggage and mail?

The Witness. The continuing driver signed for everything I had in Fresno. He signed the waybills.

Trial Examiner Wood. So that, if there was any question about this letter, wouldn't the situation show it as of this particular point where you made the interchange?

The Witness. It looks to me as if it would.

By Mr. Shaw:

Q. You said that the connecting driver at Fresno who took the bus on to San Francisco signed that he had received everything on the waybills?

A. Yes, sir. He signed the waybills, and there was nothing short.

382 (Tr. 382-384):

Q. Now, ordinarily, Mr. Camy, if the driver from the Fresno-San Francisco run, which was a continuation of your run, had signed for the letter, and the letter wasn't there, he would be in the position of being responsible for it, wouldn't he?

A. Yes, sir.

Q. Was it your instruction that you should not sign the

383 receipt for anything unless you actually have it?

A. No, sir.

Trial Examiner Wood. What was the answer?

By Mr. SHAW:

Q. What was the answer? Weren't you instructed that you were to examine everything before you received it?

A. Oh, yes, sir; yes, sir.

Q. Now, Mr. Camy, is it a fact that baggage and express and various packages are put on your bus without your knowledge, sometimes, by the agents?

A. Yes, sir.

Q. Will you explain how that happens?

A. Well, we would be checking tickets, and lots of times we get a last-minute piece of express, or two, and the baggageman takes it over to the car.

Q. And puts it on?

A. Yes, sir.

Q. And you don't know it is there?

A. No, sir.

Q. Do you have any way of checking up whether it is there or not?

A. Supposed to be on the waybill.

Q. Is it true that the agents themselves often sign the driver's name to the waybills?

A. Yes, sir.

Q. Is that a general practice?

384 A. Quite general; around Fresno, mostly.

Q. Is it customary that the driver doesn't examine that the thing is signed for by the agent, is that correct?

A. That is right.

Q. Now, he is an agent of the company, isn't he?

A. Yes, sir.

Q. He is a superior of yours, you drivers?

A. Oh, he is the baggage agent.

Trial Examiner WOOD. Is he your superior?

The WITNESS. Well, he is over the baggage, I suppose; the baggage and express.

By Mr. SHAW:

Q. As far as your relationship to baggage is concerned, he is your superior, is that correct?

A. Yes.

Q. That is, if you refused to follow his orders you would be guilty of insubordination?

A. Yes, sir.

Q. And customarily, then, the man that is ordinarily in charge of you signs your name?

A. The expressman does, yes.

385 (Tr. 385-397:)

Q. Now, how are these letters given to you at Los Angeles that are given to you for Fresno?

A. I put them on the clip, usually. They usually put them

386 in that carrier we have on the radiator there.

Q. Are they put on the clip?

A. If there aren't very many thin letters, or anything like that, we usually put them in the clip so they won't get lost—the clipboard.

Q. You feel that the high shelf they give you isn't secure enough?

A. No, sir; it is not.

Q. This, as I recall it, was on March 7—on May 2, 1936, Mr. Camy, is that correct?

A. I think that is the date.

Trial Examiner Wood. You refer to the incident of losing the letter?

Mr. Shaw. Precisely, yes.

By Mr. Shaw:

Q. Now, when did you first hear of the loss of the letter?

A. It was——

Trial Examiner Wood (interrupting). The witness testified he first heard it three days afterwards.

Mr. Shaw. I didn't so recall.

Trial Examiner Wood. Yes.

By Mr. Shaw:

Q. Is that correct, three days afterwards?

A. Yes; either two or three days after when Mr. Hodge called my attention to it.

Q. What did he say to you when he called your attention to it?

A. I had just pulled in with the bus in preparation to pulling my schedule out, and he talked to me inside the bus.

387 He says, "Henry, what is the matter with you?"

"I don't know. Why?"

He says, "You lost some more express."

I says, "I did, when?"

He says, "Your last trip up."

I says, "Where?"

He says, "Greenfield Corners," and he says, "I don't think you are working for the interests of the company very much."

I says, "Mr. Hodge, as long as I work for you, you know better than that. You know I have always worked for the interests of the company. That is my bread and butter, and I have always worked for the interests of the company."

He says, "I have a notion I will not let you go out any more."

I says, "Mr. Hodge, you are the boss. I am just working for you. You are the boss."

He says, "What do you think I ought to do?"

I says, "I don't know. You are the boss."

"Well," he says, "I guess I will lay you off for a couple of days. Come back and see me in a couple of days."

I came back in a couple of days, and he called me to a bus there. There were two or three drivers in there. He told them to go out. He shut the door, and he said he had to let me go.

I says, "Well, you're the boss."

388 Q. Why did he say he had to let you go?

A. Well, he said, losing this letter and losing this package—it was too close together.

Q. Well, let's see. One occurred on March 7, didn't it?

A. Yes, sir.

Q. And the other was on May 2?

A. Yes, sir.

Q. That is approximately two months' difference, is that correct?

A. Yes, sir.

Q. Did he have you sign an unemployment insurance slip at that time?

A. Sign a what?

Q. A State Unemployment Insurance slip, a quit slip?

A. Yes, he did; or he didn't. The secretary did.

Q. What did it say on there as to what was the reason for your discharge?

A. I don't remember.

Q. You don't remember?

A. No; I don't.

Mr. SHAW. Do you have it there? (Indicating counsel.)

Mr. BOWEN. Yes.

(The document in question was passed to Mr. Shaw.)

By Mr. SHAW:

Q. Mr. Camy, I have here a document which is Board's Exhibit No. 43 for identification, which purports to be a notice of termination of employment. I hand you the original of such document, and I intend to place a copy into the record as Board's Exhibit No. 43 for identification.

389

A. [Examining document.] Yes, sir; that is it.

Q. Is that the document which you signed?

A. Yes, sir.

Q. And which was presented to you at the time you were discharged?

A. Yes, sir.

Mr. SHAW. I am offering in evidence an exact copy of that original as Board's Exhibit No. 43.

Mr. BOWEN. No objection.

Trial Examiner WOOD. Board's Exhibit No. 43 is received in evidence.

(The document referred to was received in evidence and marked "Board's Exhibit No. 43, Witness Camy.")

By Mr. SHAW:

Q. Were you asked to sign this?

A. Yes, sir.

Q. Who asked you to sign it?

A. Miss O'Connor.

Q. What did she say when she told you to sign?

A. What did she say?

Q. Yes; what did she say?

A. Nothing; she just asked me to sign that.

390 Q. Who is Miss O'Connor?

A. Mr. Hodge's secretary.

Q. Did you think you had to sign this in order to get your pay?

A. No; I didn't.

Q. Did you read at the bottom here where it says that "I hereby acknowledge that my employment has terminated for the above reason"?

A. No; I didn't read it over.

Q. You didn't read it over?

A. No, sir.

Q. Did you know what you were signing at the time you signed it?

A. She told me she had to hand that in into the State.

Q. She had to have it?

A. Yes, sir.

Q. The statement here as given is "Failure to properly perform driving duties." Was that explained to you, what those driving duties were?

A. No; it wasn't.

* * * * * * *

391 Q. That was not explained to you, is that correct?

A. No, sir.

Q. Did you know what was meant by "Properly perform driving duties" from anything that had been said to you before by Mr. Hodge?

A. No; I did not.

Q. Did you think you were being discharged for this loss of a company letter?

A. Well, I didn't think so.

Q. You thought you were being discharged for union activities did you?

A. Yes, sir.

Q. Did you ever have an opportunity for a hearing on why you were discharged?

A. No, sir.

Q. Did you ask for one?

A. No; I didn't.

Q. Why didn't you?

A. Well, I didn't think it would do any good.

Q. You didn't think it would do any good?

A. No, sir.

Q. Do you know of any cases where men have been allowed a hearing when they have been discharged?

392 A. No, I can't recall any.

Q. How many years of service did you have with the company?

A. Well, from 1930 to 1936 with the Greyhound.

Q. Well, how much before that time with the other companies which became affiliated with the Greyhound?

A. '26 to '29; and I had some before that with W. E. Travis, between Fresno and San Francisco.

Q. He is now the President of this Pacific Greyhound Lines?

A. Yes, sir.

Q. Didn't you feel that after some fifteen years of service, you deserved more consideration than just being discharged for what you were discharged for?

A. Yes, I did.

Q. Did you take this up with the company association to try to get your job back?

A. No, I didn't.

Q. Why didn't you?

A. I didn't figure it would do any good.

Q. Do you know of any case where the company association has ever taken up the discharge of a man with the company?

A. I haven't heard of any.

Q. It is common knowledge, isn't it, that there have been no cases taken up of that kind?

A. That is right.

Mr. SHAW. Mr. Reporter, will you mark this as Board's
393 Exhibit for identification, next in order?

(The document referred to was marked "Board's Exhibit No. 44 for identification.")

By Mr. SHAW:

Q. I hand you, Mr. Camy, Board's Exhibit No. 44 for identification. It purports to be a certificate of service of Henry Alex Camy. I ask you whether this was a certificate of service handed you at some time after you were discharged, namely, on May 12, 1936.

A. [Examining exhibit.] Yes, it is.

Mr. SHAW. I offer it in evidence.

Mr. BOWEN. No objection.

Trial Examiner WOOD. Board's Exhibit No. 44 is received in evidence.

(The document referred to was received in evidence and marked "Board's Exhibit No. 44, Witness Camy.")

By Mr. SHAW:

Q. When was this handed to you, Mr. Camy? It is dated May 12. Was it handed to you on that date?

A. It was after that, I believe. A few days after that; I don't recall just what date.

Q. Did you ask for it, or did the company send it to you?

A. No, I asked for it.

Q. You asked for it?

A. Yes, sir.

394 Q. To whom did you ask for it?

A. Miss O'Connor.

Q. What did she tell you?

A. She said she would send for it to San Francisco.

Q. It was prepared in San Francisco, was it?

A. Yes, sir.

Q. Your certificate says on it, The services generally satisfactory. Did you know that?

A. Yes, sir.

Q. And under Date of leaving service, and cause. (Specify conduct, so as to convey clear understanding). It says: "May 6, 1936—Failure to properly perform driving duties."

Now, was the violation of the rule on May 6, or was it on May 2, to your knowledge?

A. May 2, to my knowledge.

Q. And when were you discharged? What day?

A. May 6.

Q. Were you paid up until May 6, during those days you were laid off?

A. No; I was paid up until May 4, I believe.

Q. That was the day Mr. Hodge first spoke to you, wasn't it?

A. Yes, sir.

Q. It was two days later he discharged you; is that correct?

A. Yes, sir.

* * * * * * *

395 Q. Practically speaking, you were an employe of this company, according to their own service letter, from September 1925 until May 6, 1936, weren't you?

A. Yes, sir.

Q. That is eleven years of service, practically?

A. Yes, sir.

Q. Do you know whether it is the custom to discharge a man of eleven years' satisfactory service for such a thing as you were allegedly discharged for?

A. I hadn't heard of it before.

Q. Did you every try to get back to work after you last talked to Miss O'Connor on or about May 12, and got this certificate of service?

396 A. No; I didn't.

Q. You never made an attempt on the part of the Brotherhood or anybody like that, to see them?

A. I went to the Brotherhood, yes.

Q. Do you know whether the Brotherhood made an attempt to see the company on this matter?

A. I think they did; I am not sure. I think they did. [Pause.] I don't know. I couldn't say.

Q. At the time you were discharged, you knew of the existence of Mr. Sager's case before the National Labor Relations Board, didn't you?

A. Yes, sir.

Q. You then filed your charge with the Los Angeles office, is that correct?

A. Yes, sir.

Mr. SHAW. At this time, for the purpose of the record, I want to correct a statement that was made by me this morning in the early part of Mr. Camy's testimony.

He testified that Mr. Hodge had asked him to sign a revocation of the Brotherhood authorization. The correct number of the exhibit was 34, rather than 19. It was my error, and I wish now to correct it. I don't think there is any question to the exhibits, but I did say "19," when I meant "34."

So, may the record show that such information as was given in regard to exhibit 19 should be properly given in regard to
397 34?

* * * * * * *

By Mr. SHAW:

Q. Mr. Camy, you were Macy's right-hand man down there, weren't you?

A. Yes, sir.

Q. You and Macy were the two men that were doing the active organizing, is that correct?

A. Yes, sir.

Q. When did the union really begin to become impressive, as far as its numbers are concerned?

A. Well, around the Fall and Winter of 1935.

Q. Well, would you say the Fall or the Winter?

A. Around the Winter.

Q. About February, would you say?

A. Yes.

Q. And so, from July of 1935 until about February, the union wasn't particularly threatening as far as numbers were concerned, is that correct?

A. That is right.

402 Q. Now, at the time that Mr. Hodge called your attention to the loss of this second package, there was some strong lan-
403 guage used between you and Mr. Hodge, was there not?

A. No, sir.

Q. Didn't you use anything other than just a quiet demeanor, like you have had since you have been on the stand?

A. No, sir; that was all I used.

Q. Didn't you tell him, "Go ahead and fire me"?

A. No, sir; I did not. I told him, "You are the boss. I am just working for you. If you think you should fire me, go ahead. You are the boss. I am just working for you."

Q. On one of these two days you talked to Mr. Hodge, wasn't there feeling between you at the time of this conversation?

A. No, sir. We talked after that.

Q. You didn't, by your act or expression, be insolent to Mr. Hodge in connection with this affair?

A. I don't think so. I don't see how it could be.

Q. Well, did you talk just as quietly as you have here on the stand?

A. Yes, sir.

Q. You have been a bus driver for a long time, haven't you?

A. Yes, sir.

Q. They are usually pretty vigorous young men in expressing their views, aren't they?

A. [Pause.]

Q. That is so, isn't it?

A. I don't think I have ever talked back to Mr. Hodge.

404 Q. You have been a driver for eleven years?

A. Yes, sir.

Q. And you didn't feel that Mr. Hodge was justified in removing you from service, did you?

A. No, I didn't.

Q. Didn't you have a feeling about it that he had done you a wrong?

A. Well, I thought he had done me wrong; yes.

Q. And yet, your demeanor was just as calm as it has been here on the stand?

A. Yes, sir.

Q. You having worked for the company the length of time you say you did, why didn't you make an application to one of the officers, either directly or through the employes' association, to be reinstated?

A. I didn't think it was any use, because I know Mr. Hodge. When he says—whatever he says, goes.

405 (Tr. 405):

Q. And yet, after eleven years of satisfactory service with the company, you didn't even take the trouble to go to Mr. Travis or to Mr. Jones, or any of the higher officials, to ask to be reinstated?

A. Well, I will tell you why.

Q. Glad to hear it.

A. About two days after Mr. Hodge fired me, there was a driver down there by the name of Allred. He come over to where I was, over at the Hotel, and he said that he had been talking to Mr. Hodge. He said that he said to Mr. Hodge, "Wouldn't you put Camy back to work?", and Hodge says, "Absolutely not."

So I figured that there was no use.

407 A. Yes, sir.

Q. You have not been especially active in this organization of the Brotherhood, have you?

A. Yes, sir; I have.

Q. Did any official of the company know it?

A. No, I don't believe so. I don't know.

(Tr. 407–408):

Redirect examination by Mr. SHAW:

Q. Mr. Camy, did you know about Sager's case?

A. Yes, I knew about it.

Q. Did you know that Sager had made application to Mr. Travis to get back to work?

A. Yes, sir.

408 Q. You knew he was turned down, didn't you?

A. Yes, sir.

Q. Did you know that he had written two letters since that time and neither one of them were answered?

A. I had heard about it.

Q. And that was the reason why you didn't go to Mr. Travis, wasn't it?

A. Yes, sir. I figured there was no use.

Q. You had never known of any case in your life where the Drivers' Association ever got a man back to work, did you?

A. I haven't; no.

409 (Tr. 409–410):

Q. Did you pay your money to the Drivers' Association right up until the time you were discharged?

A. Yes, they kept it out of my check.

410 Q. They have kept it out of your check for how long?

A. Ever since I have been connected with it.

Q. Whatever it is, you paid it up until the time you were discharged in May of 1936.

Now, among these people that you gave blanks to to sign, to join the Brotherhood—applications for the Brotherhood—did you give any of them to any of the company union representatives, or anybody very close to the representatives?

A. Yes; I did.

Q. Who?

A. Mr. Raymond.

Q. Who is Mr. Raymond?

A. He is a driver.

Q. He used to be the representative down there, didn't he?

A. Yes, sir.

Q. You gave them to a great many other people, too, didn't you?

A. Yes, sir.

412 (Tr. 412–414):

BY TRIAL EXAMINER

Q. You testified that about February of this year, membership in the Brotherhood became impressive. I believe that is the word you used.

Do you know whether or not the company knew of this accelerated growth of Brotherhood membership?

A. Yes; they knew it, I think.

Q. Have you any reason for believing that they knew it? What are your reasons?

413 A. General talk around there.

Q. What reason was there for the campaign to go slowly, and I infer from the facts as testified to, between July and February, and finally become impressive in February?

A. Well, they fired a couple of men there, and the things they were getting fired for, why the boys said, "We need something to protect us."

Q. Who were these men that were fired, and when were they fired?

A. Well, one of them was a young man driving out of Fresno to Los Angeles. He had a wreck out of Fresno by the Calwa, and the State officers exonerated him, and still they fired him.

Q. What was the other case?

A. It was a young man driving on the coast, and some fellow in an automobile made a slurring remark—cussed him in front of all the passengers—and he went back, and this fellow called him a dirty name, and this driver hit him.

Q. Do I understand, because of the company's attitude in these two cases, membership in the Brotherhood had substantially increased?

A. Yes; every time that one of the boys were fired, she increased that much more.

Q. Mr. Bowen took up with you this matter of re-application. After having been with the company eleven years, you didn't take the trouble to reapply. Did the company ever take the

414 trouble, in the light of your long service, to get in touch with you, so far as coming back into their employ?

A. No, sir.

416 CHARLES ELDRIDGE, called as a witness for the Respondent, being first duly sworn, testified as follows:

(Tr. 416–419):

Direct examination by Mr. BOWEN:

Q. I show you the original of an affidavit, copy of which is in the record as Board's Exhibit No. 3, signed Charles Eldridge, and I wish you would look at it and state as to whether or not that was an affidavit made by you.

A. [Examining exhibit.] Yes, sir; I signed that.

417 Q. And you know what is in that affidavit?

A. Yes, sir.

Q. And have remembered it to date?

Trial Examiner WOOD. May I correct counsel, in that the exhibit referred to is Respondent's Exhibit 3, and not Board's Exhibit 3.

Mr. BOWEN. Thank you.

* * * * * * *

418 Mr. SHAW. Exception.

By Mr. BOWEN:

Q. Mr. Eldridge, does not the affidavit state facts relative to the recitations therein as regards an accident, or collision, between a vehicle that apparently was under your control and under the control of Mr. Sager?

A. Yes, sir.

Q. When did you first bring this matter to the attention of the Pacific Greyhound Lines, or any of its officials, subsequent to the time that you recite in the affidavit that you had the conversation with Mr. Sager?

A. To the best of my knowledge, I think it is six months, or so.

Q. And how did you bring the matter to the attention of those who were connected with the Greyhound?

A. I spoke to one of the drivers there.

Q. The drivers at where?

A. On the San Francisco run that stopped in Salinas.

Q. At Salinas. And after that, did an insurance representative get in touch with you relative to this claim?

A. First, the division man came down, and then the insur-
419 ance man came.

Q. And do you recall just about when that was?

A. Let's see, now. About four or five months ago from now.

Q. And subsequent to that time you were paid the amount of your claim in connection with this collision?

A. Yes, sir; the company paid.

Q. How much was it they reimbursed you?

A. Either $4 or $4.50, or something like that. I think $4.

Mr. BOWEN. That is all.

(Tr. 419–420):

Cross examination by Mr. SHAW:

Q. Who asked you to prepare this affidavit, Mr. Eldridge?

A. You see, the insurance man came down with that.

* * * * * * *

Q. Did you write this affidavit up yourself?

Let's see. First of all, the insurance man took my story
420 and came back a day later and had me sign a typewritten copy.

Q. You don't know the name of that insurance man?

A. No; I don't.

Q. He never told you what his name was?

A. Yes. In fact, he gave me a card, and too, I signed a paper not long ago. I think it was Spiegal—Foster and Spiegal. I sent a copy there of something pertaining to that—Foster and Spiegal—about a month ago.

424 (Tr. 424):

Q. So, when you said six months, you were wrong? You mean, practically a year, a year later?

A. What do you mean there?

Q. Well, when you said you waited six months after the accident, and then turned it in [pause]——

A. Well, it must have been over six months, though.

Q. Well, it was pretty nearly a year.

A. It would be, I guess.

Q. It was in March?

A. Yes.

Q. After all, Sager wasn't discharged here until the end of March.

A. Well, it would be that long, then; yes.

426 (Tr. 426–427):

Q. Well, you have got herein your affidavit that he said that the accident was all his fault. Did he say that?

A. No, no. He never made any statement that it was all his
427 fault, although he did say that there was no doubt I wasn't in the wrong.

Q. Well, you have got here that it was all his fault. He said it was all his fault.

Is that your language, or the insurance man's language?

A. [Pause.]

Q. "The accident was all his fault"—where did you get that?

A. He didn't say it was all his fault.

Q. Then, the affidavit is not true in that respect?

A. No; not in that respect.

Q. Did you go to the Notary with this when you signed it [indicating exhibit]?

A. No.

Q. You walked over to the Notary yourself?

A. No.

Q. Who notarized this for you?

A. I don't know.

Q. You don't know who notarized it?

A. I merely signed the affidavit.

Q. Well, who notarized for it? Who did you swear to at the time you made this affidavit?

A. I didn't swear to it before anybody.

Q. Then, it isn't an affidavit.

A. I certainly don't know. I merely signed what they brought to me.

440 *Testimony of Earl Hensley*

DIRECT EXAMINATION

(Tr. 440):

Q. And what business are you engaged in?

A. General Claim Agent, Pacific Greyhound Lines, Inc.

Q. How long have you been in that business?

A. Oh, better than twelve years.

Q. Connected all that time with the Pacific Greyhound?

A. Well, not with that company as such, but with that company or its predecessor companies.

Q. And just explain briefly what are your duties in connection with the Pacific Greyhound Lines, where you are employed.

A. Well, my duties are rather divided: One in the handling of claims; two, in the handling of safety work.

In other words I sponsor and handle the safety campaigns, the accident prevention campaigns.

On the other hand, as it were, I handle the settlement of claims that arise out of accidents occurring with company buses or upon company property.

445 (Tr. 445–446):

Q. Does Pacific Greyhound Lines carry their insurance through an insurance company?

A. They do not. We have been self-insured since the first 446 day of August 1935.

447 Q. Now, Mr. Hensley, are accidents classified as to the type

448 of the accidents, whether they were head-in collisions, and whether they are side-road?

A. That is correct. We have, rather, a code classification for accidents. It is merely to simplify putting them together. They are separated into meeting and passing accidents—overtaking and passing—rear-end collisions.

All told, I think there are about 15 of the more common classifications.

Q. Referring to the so-called rear-end accidents which, we will assume, means an accident caused by the bus running into a car or an obstacle ahead of it, how is that accident classified as to seriousness in the matter of both the results that may be obtained from a collision and also to claims?

A. We have rather looked upon a rear-end accident to be of very grave importance. To some extent, you might say, that that is one of the classifications of accidents that is considered more or less one of the cardinal sins.

To sum it up briefly, if you can't miss a car that is in front of you, then, it seems unlikely that you are going to be able to safely negotiate a bus across intersections, around curves, and many other places that you have to negotiate them.

Q. Does such an accident also lead to heavy claim liability?

A. I believe that some of the heaviest claim losses that we have had, particularly since our self-insurance plan, have been by 449 reason of the rear-end collisions. The impact is such that they seem to produce back injuries, some snapping of the vertebrae, or something of that type, usually in the lumbar region. I couldn't say why they do that, but I do know that that is usually the result.

Q. Do you know of claims that have arisen of such injuries received in that manner out of that kind of an accident?

A. I have one claim in mind, in particular, that occurred at Malaga, California, on October 12, I believe. A bus ran into the rear end of the Dodge that was proceeding in the same direction. There were six people in the Dodge. One girl received a completely severed spinal chord, I believe, between the last cervical and the first dorsal vertebrae.

Another chap that was in the Dodge, who was riding in the back, threw a turtle-back up on the Dodge, and there were two kids in that who had both legs severed below the knee. They died 16 days later with gangrene. The remaining four were more or less severely hurt. All told, the accident cost us around $18,000, I believe.

Q. Was the driver in that instance discharged?

A. He was.

Q. Did you make a compilation at random out of your records of so-called rear-end collisions?

A. Not all of them. I picked a few cases where drivers had been dismissed.

Q. Showing you this memorandum, headed by the names of
450 eleven proper names, each one is the name of a driver that was in the employ of Pacific Greyhound Lines?

A. That is correct.

Q. And do all of those relate to so-called rear-end collisions?

A. That is correct.

Q. And in all of those instances, were the drivers dismissed?

A. That is correct.

Q. And the amount of claims? From what amount do those claims range?

A. There is one accident here that ran approximately $10,000; is the highest. There is one here where there is no damage at all.

Q. And between what dates do those accidents range.

A. From 1930 up to practically the current date.

457 (Tr. 457:)

By Mr. BOWEN:

Q. Showing you, Mr. Hensley, Respondent's Exhibit No. 5 for identification; was that a drawing that you made from measurements that you took at the scene of this accident?

A. [Examining exhibit.] It is.

Q. And when did you take those measurements, and when did you make the drawing?

A. I took the measurements the evening the accident occurred. I made the drawing the following day at home.

460 (Tr. 460-461):

Q. Now, please proceed, Mr. Hensley, and state what further occurred in connection with your investigation of this accident, and any connection you may have had with Mr. Sager relative to the investigation.

A. After examining the scene of the accident after Mr. Harnish came into my office Monday morning, the 9th, and made claim against

the company, I felt from what I then had that it was best, if we could, to make an expeditious and satisfactory settlement of the case.

Q. You had taken statements from other witnesses besides Mr. Harnish?

A. From some of them; yes.

Q. I see. And those statements, some of them in some respects, are conflicting as to the location of the bus and the automobile?

A. There is some conflict; yes.

Q. All right. Go ahead now with your statement about your investigation.

A. The case was passed, or, the file was passed back to Mr. Dunn. He was instructed to obtain a settlement in a reasonable
461 and fair amount, if possible, with Mr. Harnish. He proceeded out that afternoon, and I believe he made the settlement that afternoon; either that afternoon, or the following morning.

Q. And were you called in to any of the officials of the company in connection with their investigation of this accident, and the passing upon the responsibility of Mr. Sager?

A. As I recall, Mr. Krug called me about the accident. I told him that it appeared to me as though we were legally liable for what happened to the Harnish car. Subsequently he came up—I don't recollect whether it was the same day or the following day—to see Mr. Travis; and Mr. Travis called me into his office, and asked me practically the same question.

I told him that I felt that, legally, the claim should be settled. At that time, I think he asked me if I had a statement from all of the passengers' names that were furnished, and I told him "No." He told me to be sure of all of the facts of the accident, which is not an unusual request; that a statement be taken from all of the witnesses, or the passengers. He made that request, I assume, Tuesday, if the loss was settled Monday.

In other words, I know that two or three statements were taken after the loss was settled.

463 (Tr. 463–464):

Q. Now, in your work as safety man, do you come in contact with the term, or have you knowledge of a driver that may be, so-called accident prone? If you do, just go ahead and describe what it is. What you consider it in your industry.

A. That is a rather common expression in safety fields. National Safety published a pamphlet upon accident prone.

I can't tell you what causes that, because that is something that safety men have been trying to answer for a good many years. We know part of what may cause it, but it is definitely a factor. For some reason, some men have a proneness toward accidents. Whether it is psychological or physical, or whatever it may be, they just can't drive.

Q. And do you find that they may have a driver that has been a safe driver, and all of a sudden he develops something in his makeup that has a tendency to cause accidents?

A. We have had that unfortunate thing occur, yes.

Q. And in the insurance world, not only in relation to the mass of business insurance, but liability insurance generally on automobiles, with which industry you have had some experience, is there that knowledge that there are people who are prone to accidents, and develop it, and that the insurance companies will refuse to write them?

464 A. That is common knowledge.

466 (Tr. 466:)

CROSS EXAMINATION

Q. Now, you said that you had an accident frequency at the present time of 2.22. Is that correct?

A. Approximately.

Q. Approximately. That is pretty good, isn't it?

A. I think it could be better. However, it is a fair record.

Q. Well, will you grant that it is a considerable improvement over your 7.5 of 1929?

A. I would so consider it.

Trial Examiner Wood. Is it considered pretty good?

By Mr. Shaw:

Q. Throughout the country——

Trial Examiner Wood (interrupting). Just a minute, Mr. Shaw!

Mr. Shaw. I am sorry.

Trial Examiner Wood. Is it considered pretty good?

The Witness. Average.

471 (Tr. 471–473:)

Q. You say you try to cut down accidents. Let us assume, Mr. Hensley, that I am driving a truck, or a bus, at night in the mountains. Somebody throws themselves out in front of my bus, kills themselves. The Coroner's Jury later discovers it has been a suicide.

Now, from any possible theory of accident proneness, or any other theory of accidents, is there any way you can hold that driver responsible for that accident?

A. I would say No.

Q. Then, as far as an accident in which that person had any human part, he is totally excused, isn't he?

A. As you state the accident, I would say that he should be.

Q. Are you acquainted with that accident that Dick Sager had where the Coroner's Jury found a suicide?

A. I have only a faint recollection of it. I don't know about the factual situation.

Q. You know there was a suicide found by a Coroner's Jury?

A. I heard some mention of it while I was sitting here in this case.

Q. You never heard of it before?

A. Oh, yes; yes.

Q. I am quite sorry. The Coroner's Jury did not find a suicide. They found, instead, an unavoidable accident.

You have pretty close contact with the other officers of
472 the company, don't you?

A. I feel so.

Q. I mean, you go to lunch with them and talk with them, don't you, about company policy?

A. Oh, I go to lunch with them. I talk with them about company policy to some extent.

Q. I mean, your knowledge of the operation of the company isn't confined entirely to the safety part of the company, is it?

A. Oh, I have some casual knowledge.

Q. I mean, you took quite an interest in the founding of this company union, didn't you, when it was started?

A. I did not.

Q. You talked to Macy, I believe, about it.

A. I did.

Q. Did you?

A. Yes.

Q. Well, that was hardly in the safety program, was it?

A. No; it was not.

Q. How did you come to do that?

A. I had to go to Phoenix and El Paso to safety meetings. At that time, as far as I know, I think the question of union activities first came up. Mr. Travis asked me——

Trial Examiner Wood (interrupting). What do you mean, first came up?

473 The Witness. Well, that was the first I had heard about them along about that time.

Mr. Travis asked me if I was acquainted with some of the boys on the south end, as I was in Los Angeles for several years, and I told him Yes.

He told me, when I was down there he would appreciate it if I would talk to some of the fellows and get their reaction to the proposition as a whole.

I told him that I would, and I further told Warren Macy, when I was sitting in the bus with him, that I had been asked to do that by Mr. Travis, and that was the reason why I was asking him.

By Mr. Shaw:

Q. Well, that was in the Fall of 1933, wasn't it?

A. I assume so; it was a long time ago.

Q. You knew that the Brotherhood was being organized at the time, didn't you?

A. Yes, I heard rumors of it.

475 (Tr. 475–478):

Q. Well now, in those major cases, where work is to be done on account of a claim, were the drivers always fired for those rear-end collisions?

A. I would say, the mortality was pretty high. I couldn't say whether all of them were.

Q. Now, you are acquainted with an accident that Driver Dyer was in, down in Los Angeles, aren't you?

476 A. I am not.

Q. You are not?

A. I don't remember it.

Q. Well now, you remember the others pretty well. What about this one that Dyer was in?

A. Well, I don't remember it.

Trial Examiner Wood. Is that your district?

The Witness. Yes.

By Mr. Shaw:

Q. You mean, you just don't call it to mind, or what?

A. That is correct.

Q. You know that he had a rear-end collision, don't you?

A. I heard that he did here this morning.

Q. You never heard it before?

A. I probably did, but I don't remember it.

Trial Examiner Wood. It wasn't one that you referred to as a major case that required a lot of work in connection with a claim, then?

The Witness. I would say, certainly it couldn't be that, or I would remember it. You must know, that I have a large territory, and a tremendous amount of claims. I can't carry them around in my mind.

By Mr. Shaw:

Q. Well, you didn't have a tremendous amount of work involved in Mr. Sager's claim, did you?

A. Not a great amount of work.

477 Q. It took only a couple of days to get that settled, didn't it?

A. That is right.

Q. So, you wouldn't call that a major case, would you?

A. Not the final result, no.

Trial Examiner Wood. Would you call it a major case from any angle, Mr. Hensley?

The Witness. It had dangerous possibilities, but I wouldn't classify it as major in the sense of results.

By Mr. Shaw:

Q. That accident alone, just with that accident alone, was that a dischargeable accident of a man with some eight years' experience?

A. [Pause.]

Well, I hardly know what you mean by "dischargeable accident."

Q. Is that the kind of an accident that the policy is to discharge on?

A. It is.

Q. That accident alone?

A. Although, in the discharging of a man, I am informed that they take into consideration his general record. It is gone through with; and a man, being "accident prone," or he may reach a point where it takes some final thing to bring about the discharge of a man.

Q. Mr. Hensley, if a man that works ten years for the com-
478 pany with a pretty good accident record, and he had exactly the same accident that Dick Sager had, would he be discharged?

A. I think the record speaks for itself. They have been.

Q. They have been?

A. Yes.

Q. Well, what kind of security in that kind of work is there for a man? It is very likely over a period——

Mr. Bowen. (Interrupting.) Objected to as incompetent, irrelevant and immaterial; not within the issues of this case.

Mr. Shaw. This is cross examination.

Trial Examiner Wood. The objection is overruled. The witness may answer.

By Mr. Shaw:

Q. What security has a man got if that is going to happen in the job?

A. To keep his record so clear that if he does have an accident where he is negligent, in addition to other accidents where he has been negligent, it is not sufficient to cause him to be removed from service.

Q. Then, that is not a dischargeable accident, in and of itself?

A. [Pause.]

Q. Would it be?

A. [Pause.]

Q. Would it be? You are an expert.

A. It depends on the complete record of the man.

480 (Tr. 480):

By Mr. Shaw:

Q. Then, the accident itself must be considered with the record; is that right?

A. That is right.

481 (Tr. 481-483):

By Mr. Shaw:

Q. Mr. Hensley, you testified yesterday that that evening after the Tanforan accident you went out and investigated the accident; is that correct?

A. Investigated the scene, yes.

Q. The scene?

Mr. Harnish's statement of the accident, says that the acci-
dent occurred about 6:45, when it was dusk, and at the
482 time his headlights and the tail light were still burning.

What did you do? Investigate this accident at night?

A. I was there about—oh, I would say approximately 10:00 o'clock.

Q. It was dark then, wasn't it?

A. Not completely dark; there were quite a few street lights. It was nighttime, however.

Q. It was nighttime?

A. Correct.

Q. How could you accurately measure skid marks at nighttime? Did you have a flashlight or what?

A. With a tape line and a flash light.

Q. Who was with you?

A. Mr. Krug.

* * * * * * *

Q. And it is a six-lane highway?

483 A. At that point; yes.

Q. A pretty busy highway?

A. I imagine.

Q. And you and Mr. Krug got out there at 10:00 o'clock with a tape line in the middle of all that highway and measured skid marks; is that correct?

A. That is correct.

484 (Tr. 484–485):

Q. What happened? Did both of you get out of the car when you investigated that? Did both of you get out of your car?

A. No; Mr. Krug got out of his car, and I got out mine.

Q. Oh, two different cars went there?

A. Yes.

Q. Did one of you hold one end of the tapeline and the other the other end of it?

A. Mr. Krug had one of his employees there.

Q. Oh, there were three of you there?

A. Correct.

Q. Who was the other employee? Who was the other person?

A. I don't know his name.

485 Q. You don't know his name?

A. I know him, yes; but I don't know what his name is. He is an employee of the company.

Q. Well, is it customary for an employee of the company to go out [pause]; he is just a driver you mean?

A. Oh, no; he is Mr. Krug's chief clerk.

* * * * * * * *

Q. Now, this was on Saturday night, wasn't it?

A. Correct.

Q. Saturday night, March 7, the next day was Sunday, wasn't it?

A. Right.

Q. When was the first time you saw Mr. Harnish?

A. Monday morning.

Q. That is the 9th?

A. Correct.

487 (Tr. 487–489).

By Mr. SHAW:

Q. You say this was a statement taken on the 9th in the morning, is that correct?

A. Correct.

Q. Who wrote this statement of Harnish's?

A. I did.

Q. You did. And Harnish signed it, is that correct?

A. Correct.

Q. The statement is in your handwriting?

A. Correct.

Q. Well now, we have here the release, which is also in evidence as Board's Exhibit No. 27.

The release is dated the 9th of March. That would be on Monday, wouldn't it?

A. Correct.

Q. So, it was right after you took Mr. Harnish's statement that Mr. Dunn was sent out to get that release signed, and pay off the claim, wasn't it?

A. Not very many hours afterward.

Q. Not very many hours.

You didn't have an opportunity at that time to contact any other witness, did you?

A. I had not; Dunn had.

Q. Dunn had. When did Dunn contact, and what witnesses did he contact?

A. I would have to see the file.

488 Q. Well, you said that, on the basis of your investigation that night, right after the accident, plus the statement of Mr. Harnish, that you advised the Greyhound Company that Mr. Harnish could win in any court in the land, didn't you?

A. I did.

Q. Well, I ask you, as one advising somebody as to the payment of claims, whether an investigation made at night, or when you weren't at the scene of the accident, plus the statement of the person who was hit, is any kind of a basis for any reasonable person to pay off a claim on?

A. That kind of an accident, yes.

By Trial Examiner WOOD:

Q. Had you interrogated the driver of the bus at that time?

A. I didn't talk to Mr. Sager.

By Trial Examiner WOOD:

Q. Did anyone else to your knowledge?

A. Mr. Krug had an accident report from him.

By Mr. SHAW:

Q. Now, Mr. Hensley, I am reading from Respondent's Exhibit No. 2, which is the accident report put in evidence.

At the time you made this decision that the Greyhound Company couldn't win that case in any court in the land—at the time you made that decision you had in your files a statement of your driver, and part of that statement, is as follows:

489 "Driver V. R. Sager, Tanforan Special northbound, Bus 678 at approximately 6:50 P. M. March 7th, 1936, proceeding northbound in center lane near Colma, California, at a speed of approximately 40 miles per hour. When approximately 150 feet from Colma intersection Chrysler roadster operated by L. Harnish of the Savoy Hotel on Van Ness Avenue, San Francisco, proceeding in the first lane of traffic at a speed of approximately 10 miles per hour cut at an angle of 45 degrees across the second lane into the third lane. The cement curb protecting the street car tracks ends at approximately 150 feet from the intersection and the Chrysler cut across the second lane presumably to go into the intersection. When at the third lane of the highway Chrysler put on brakes and as near as Driver Sager can ascertain stopped. Driver Sager was approximately 75 feet from the point of accident and applied his brakes."

Now, you had that on file and you read that before you ordered this settlement?

A. Yes.

Q. Did you think Sager was a liar, or what?

A. My opinion remained as it still is: That we were liable for the case.

Q. What?

A. That there was a liability.

490 (Tr. 490–492):

By Mr. SHAW:

Q. Did you ever call Sager in and ask as to the truth of his statement?

A. I don't discuss the accidents with the drivers.

Trial Examiner WOOD. Answer "yes" or "no." Did you?

The WITNESS. No.

By Mr. SHAW:

Q. It is customary that you should talk to the driver?

491 A. It isn't necessary.

Q. The driver has no voice in it?

A. A great deal with the superintendent, not with me.

Q. Did you ever see the police report on the accident out there?

A. Yes.

Q. You did.

I ask you if this is a correct copy of it.

A. (Examining document.) It appears to be.

Q. It appears to be. Have you examined it?

A. Yes.

Mr. SHAW. Mr. Reporter, will you mark this as Board's Exhibit for identification next in order?

(The report referred to was marked "Board's Exhibit No. 45 for identification.")

Mr. SHAW. I have just shown the witness Board's Exhibit 45 for identification, which purports to be a report of one Joseph Kusber, officer of Daly City, San Mateo County, California, on the Tanforan accident.

I offer it in evidence.

Mr. BOWEN. No objection.

Trial Examiner WOOD. There being no objection Board's Exhibit 45 is received.

(The report referred to was received in evidence and marked "Board's Exhibit No. 45, witness Hensley.")

492 By Mr. SHAW:

Q. Now, you knew from Mr. Harnish's statement given on the morning of the 9th that Mr. Kusber, the man who made that report, happened to be an eye-witness to the accident, didn't you?

A. I did not.

Q. Well now, Mr. Harnish makes a statement here that while he was talking to Sager, just immediately after the accident, the policeman Kusber came up to the scene, "had bus driver pull off highway to the right, and I also pulled over behind the bus. Policeman secured our names, the bus driver secured my name, took license number, and departed."

Now, that was a pretty good indication, wasn't it, that he was pretty close to the accident at the time it happened?

A. Yes.

Q. Did you interview Officer Kusber?

A. Not before the settlement was made.

A. Not before the settlement was made.

494 (Tr. 494–495):

Q. Did you pay any attention at all to the driver's statement of the accident?

A. Sufficient.

Q. Well now, here is a directly conflicting statement with Mr. Harnish, and you resolved that in favor of Mr. Harnish's statement, didn't you?

A. I did.

Q. You know Mr. Harnish is on the other side of the fence. You know that every man who is in an automobile accident thinks he is right, don't you?

A. Yes, sir.

Q. You knew Mr. Harnish thought he was right, didn't you?

A. Yes.

Q. You knew Mr. Sager thought he was right, didn't you?

A. Yes.

Q. Why did you take Mr. Harnish's word rather than Mr. Sager's, who is your employee?

A. From my investigation and information I had, my judgment was reliable.

Q. Did you talk to any of the witnesses that Mr. Sager had garnered for you before Monday morning?

A. No.

Q. Not a one of them?

A. No.

495. Q. So, your impression was taken from Harnish's statement, plus that investigation out there at night? That is all you had, wasn't it?

A. Plus the other statements then available.

Q. What were those statements?

A. Dunn took some statements.

Q. When did you call Dunn in on this matter?

A. The same night.

Q. Saturday night?

A. Yes.

* * * * * * * *

By Mr. SHAW:

Q. Did you ever talk to Mr. Sharland?

A. I believe Mr. Dunn picked up that statement. I would have to see the statement.

497 (Tr. 497-501):

Q. Let's go into this thing for just a moment.

We are examining a report handed into the company signed by Mr. Fred C. Sharland, an eye-witness of the accident, is that correct?

A. A passenger on the bus.

Q. Presumably an eye-witness.

A. Some of them couldn't see.

Q. You accepted him as such, didn't you?

A. Well, we take their statements. A lot of time they don't see the accident.

I didn't read that very closely a moment ago.

Trial Examiner Wood. Did you accept him as an eye-witness?

The WITNESS. Yes.

By Mr. SHAW:

Q. Well, now, Mr. Hensley, Mr. Sharland says the following:

"I was riding with the driver when the accident occurred. We were going upgrade at the time and doing not more than 20 miles per hour. I observed the other machine ahead of us and making as though to make a left hand turn. As we came up toward his car he stopped and then started forward again and the bus struck the rear of the car. If he had kept on going he would have gone

498 out of our path. The bus driver could not have swerved his machine to avoid the accident. It is my opinion that the driver of the bus was not at fault. At the time of the collision the bus was traveling 15 to 20 miles per hour. There was a man and

woman in the coupe, and neither was hurt. I was not hurt, and I don't think any of the passengers were."

Here is a statement that the driver is not at fault in the accident.

A. Passengers are usually sympathetic with the driver.

Q. What do you take their evidence for? Don't you think it is any good?

A. To find out the complete story. We might be able to use some of it in court, if we are sued.

Q. He doesn't say anything here about both of them being in the third lane, like Mr. Harnish said?

A. That is correct.

Q. He says that one was ahead of the other, but he doesn't say they were in the third lane?

A. Correct.

Q. This, certainly, is a piece of conflicting evidence to Mr. Harnish's statement?

A. (Addressing Trial Examiner Wood.) That doesn't call for any answer?

By Mr. SHAW:

Q. Isn't it conflicting, I mean?

A. Read the question, please.

499 (The pending question was read by the reporter, as follows: "This, certainly, is a piece of conflicting evidence to Mr. Harnish's statement, isn't it?")

The WITNESS. There doesn't seem to be a great deal of conflict.

* * * * * * *

500 The WITNESS. Read the question, please.

(The pending question was again read by the Reporter, as follows:

"If we accept Mr. Sharland's statement as true, that the car and the bus were proceeding along, and the car made an indication of going to the left, there was heavy traffic on both sides so there couldn't be heavy swerving, heavy traffic behind, and there was an indication that the car was going to the left; he started to pull left, then stopped abruptly, would you say that there is clear liability in any court in the land on the part of the bus that ran into him?")

501 The WITNESS. In my opinion, the case would be still very dangerous as to liability.

By Mr. SHAW:

Q. You know the company isn't going to pay any claim for which they are not liable, don't you?

A. I wouldn't.

Q. There is certainly no obligation on the part of anybody to pay for any accident that they weren't negligent in, isn't that correct?

A. That is correct.

503 (Tr. 503–507):

Q. It was that afternoon then, on the 9th, that Mr. Dunn made the settlement. It was that morning, on Monday morning, that you advised the company to settle, and that there was clear liabiliy on the part of the driver?

A. That is correct; speed is the essence.

Q. Speed is the essence, and what do you remember now about the speed at that time? Or what did you think the speed was? How fast was the driver going in your mind?

A. From the sign of the report, he was going 40. However, by my response I meant that you must handle cases quickly. You misunderstood me.

504 Q. Oh, I see. What you meant is handle cases quickly, even though you have a good case? Is that what you mean?

A. Must handle all of them as expeditiously as possible.

Q. And the way to handle them as expeditiously as possible is to settle them?

A. Where you are liable, yes.

Q. And you were sure there was clear liability here?

A. That is my opinion.

Q. And you so advised the company?

A. I did.

Q. On the basis: one, on your investigation at night; two, Harnish's statement?

A. And all the other facts that I had.

Q. Including Mr. Sharland's report. Did you have that?

A. By conversation with Dunn.

Q. Dunn wasn't there at the accident, you know?

A. No. He talked to Sharland.

Q. You talked to Dunn that morning quite a bit, didn't you?

A. I wouldn't say a great deal.

Q. Where do you suppose Dunn got the idea that the company was putting Sager on the spot, and trying to catch him at something? Did you tell him that that morning?

A. I did not.

Q. Harnish testified that Dunn told him that when he settled the case.

505 A. I heard the testimony.

Q. Did you talk to him about Sager, about his record?

A. I did not.

Q. You never mentioned the driver's name, is that right?

A. I probably told him who had the accident.

Q. You didn't say anything about the driver?

A. No.

Q. You don't know where Dunn got the information?

A. I don't think he said what Harnish said he did.

Q. Oh, Harnish wasn't telling the truth then, in this case?

A. I simply think he was mistaken.

Q. You think he was mistaken when he talked to you that morning about the accident?

A. No.

Q. He was mistaken sometimes, and sometimes not, is that correct?

A. I assume we all are.

Q. Now, you mentioned yesterday that the accident frequency in 1929 was about 7½ accidents to every 100,000 miles. Is that correct?

A. As best we could determine.

Q. Yes. All right.

In 1930, it was about 5.01, is that correct?

A. Approximately.

Q. And 1935, it was 2.22?

506 A. Correct.

Q. Now, do you have an aggregate average over the years since 1929? What has been your aggregate average?

A. We have the material to make it. I don't think it has been figured out.

Q. Well, could you guess? It would be about 3.08, wouldn't it?

A. 3.08?

Q. 3.08, for after all, you were up to 7.5 there one time.

A. I don't think it would run that high.

Q. What would you estimate?

A. A little better than 3.

Q. A little better than 3? 3.1, would you say?

A. That, at least.

Q. All right.

Would you say that a driver, who had been driving since 1929, some 450,000 miles, who had an accident frequency of 1.9 for that period, would be a bad driver when the average, as you stated, is 3.1?

A. On the basis of comparing the average between the two figures, he would have a good average.

Q. Now, by that, I am including all accidents, not just the accidents he is responsible for, or has been disciplined for. I mean, all accidents of any sort.

A. That is right. You would have to do that to compare it with the other figures which also includes all accidents.

507 Q. All right.

After all, if we said that he was only responsible for the accidents that he had been disciplined for, or had been held responsible for, then we would have an average much lower than the 1.9, wouldn't we?

A. Yes.

Q. Now, Mr. Sager was called on for, I think, eight different accidents during his career. He testified that during that time he had driven 450,000 to 500,000 miles.

Now, taking it at the lowest point—450,000 miles—and taking the number of accidents as eight—only three of which he was responsi-

ble for, was disciplined for—wouldn't you say that is a very, very high record for a driver?

A. If the accidents were only eight; yes.

Q. Now, how many do you think there were? I counted them up at eight. If I am wrong, I would be glad to have you say so.

A. I think you are.

Q. How far wrong am I?

A. Well, I think there is [pause] well, you have the report. Let's see the count.

Q. I would like to check that up, if I can. Is it possible to get, the number of accidents, taking it both from Judge Lucas' letter and the statements made here?

May we have a short recess to find that out?

508 (Tr. 508–511):

Q. Can you state now the number of accidents, Mr. Hensley?

A. (Making calculation.) 17 appear on this statement.

Q. May I see the statement?

A. Yes.

(The statement referred to was passed to counsel.)

Mr. SHAW. I didn't recall anywheres here that that letter went into the record.

Trial Examiner WOOD. Off the record, please.

(Whereupon followed informal discussion off the record.)

Trial Examiner WOOD. On the record, please.

By Mr. SHAW:

Q. There are some things I want to ask you about here. Mr. Sager doesn't recall one of the accidents. Perhaps you can clear us up.

Under the accident dated August 7, 1930: "Bus proceeding down narrow grade near Mountain House on extreme right side of road. In meeting and passing approaching car bus bumper clipped left rear fender of other car. It seemed there was sufficient space for passing but other car did not pull over quite far enough."

He doesn't recall that. Do you recall that yourself?

A. Not the accident, but I recall finding the report.

Q. You don't?

A. Showing that Mr. Sager was driving.

509 Q. Did you prepare this yourself?

A. Well, it was prepared in my department.

Q. Under your supervision?

A. Yes; that is right.

Q. Now, do you count as an accident where the driver is entirely out of a car, out of a bus? It is stopped and somebody comes along and hits it in the side.

A. In our company frequency we figured everything.

Q. You would count that as an accident against Sager, against his accident record?

A. It would be an accident standing against his record, and it would be counted in the company frequency in that 2.92 that you referred to.

Q. All right.

Now, you have got here as an accident: "Bus nearing Salinas, lady passenger while attempting to turn light on or off cut her finger on the cowel of the compartment light."

Do you count that against him as an accident?

A. That is an accident. It occurred on his bus.

Q. You have got here as another accident that occurred on his bus: "Lady passenger endeavoring to get into her berth, stood on suit case and slipped, skinning her leg."

Is that an accident?

A. Yes; that is an accident.

Q. Another one here: "Bus driver assisting passengers to
510 alight, after completion of run, San Francisco, baggageman brought out baggage hoist and in coming alongside bus, he misjudged the clearance and struck rear of bus."

Do you count that against Sager, after he has completed his run?

A. It was his bus there in the terminal, and it is still an accident. It must be put in our frequency, and so it must go in.

Q. Why don't you charge it up to the baggageman instead of to Sager?

A. We charge our accidents to the record of the driver having charge of the bus.

Q. That is the kind of thing that you put in your accident frequency record?

A. Everything that is an accident goes into that.

Q. Certainly, Mr. Sager couldn't have done anything in his power to keep that lady from skinning her leg when she got into the berth, could he?

A. Well, I don't know without reading the report.

Q. Well, I mean on its face?

A. On the face of it you are undoubtedly correct.

Q. Now, Mr. Hensley, of these accidents, two occurred in 1929 and six occurred in 1930; two in 1931; two in 1933; one in
511 1934; or rather, two in 1934. The boy was improving as a driver, wasn't he?

A. From what you say, he apparently was having fewer accidents.

512 (Tr. 512-521):

Q. Well now, in 1932, the boy's accident record was two accidents. I am accepting them, including all these women falling out of berths, and that sort of thing.

513 Two accidents there wouldn't be over the average, would it, in 60,000 miles? That is, if he went 60,000 miles?

A. 2 for 60 would be close to 4 for 100. It might be somewhat over the average. I don't know that year. What year did you have?

Q. That is 1932.

A. I don't think the frequency was quite that high—the company frequency.

Q. And one of those was the lady in the berth, and the other was the one he was disciplined for.

A. They were both in the company frequency also.

Q. I am assuming from your statement that the company frequency includes everything?

A. That is right.

Q. Now, in 1933, he had one accident and that one accident he had is listed here, which is the woman getting into the berth. In 1932 it was the woman cutting her finger on the light cowel.

Now, that, certainly, is pretty good for 1933, isn't it?

A. Correct.

Q. Now, in 1934, he had three accidents: one was this baggageman accident; and another was one happening down in Redwood City with which he was not charged; and another one in 1934 was
514 the accident with which he was charged, of clipping that car at the San Francisco terminal, coming into the terminal.

Now, that was the three accidents and you haven't figured what your frequency was in 1934; but, apparently, that was somewhat over the frequencies in 1934 for 60,000?

A. Quite a bit higher, I would say.

Q. Quite a bit higher.

In 1935 no accidents that you know about at the time he was discharged?

A. That is right.

Q. A perfect record in 1935.

Now, when you give out these medal letters saying you have had no accidents for a year, do you include all accidents in that statement?

A. The majority of them. There are some types that we don't count against the driver's record in computing that. There are certain exceptions.

Q. Now, you gave two medal letters here to Mr. Sager, and you signed them. They are Board's Exhibit 31-A and 31-B. One of them was for the period six months prior to January 15, 1933, and one was for six months prior to July 15, 1933.

I presume, therefore, that the medal letter runs from approximately July 15, 1932, until July 15, 1933. Will you state whether I am correct or not?

A. (Examining letter.) The Exhibit 31-B covers the period
515 from July 15, 1931.

Q. 1931?

A. It covers—let me read it just a moment, please. [Reading letter.] It covers a one-year period, July 1, '32 to June 30, '33.

Q. July 1, '32 to June 30, '33?

A. Correct.

Q. Well now, during that period on your record here you have two accidents: One of them was a lady passenger turning on a light, and the other was the lady passenger getting into the berth.

So, apparently, you didn't include those in your statement of no accidents?

A. We didn't charge them against the award for the driver. We didn't feel like that warranted his not getting that letter.

Q. So, these awards are not figured in accordance with your accident frequency basis, are they?

A. Well, our frequency basis includes everything. As I say, there are certain exceptions with respect to the awards. We don't count every accident in determining the awards that a driver will receive.

Q. In Sager's record, up until the last accident, out of nine year's driving—450,000 to 500,000 miles of it—he had the two accidents for which he was disciplined, neither one of which accidents were at all serious from the point of view of results. Is that a bad record?

516 A. I have never compared it on that basis, but I wouldn't think so.

Q. It isn't a bad record at all, is it?

A. Of course, each accident has its own peculiar facts which must be considered, but as you state it, no.

Q. One of these accidents, according to the company's statement here, is "in bringing bus No. 918 into San Francisco Terminal, car 524 was parked at right on Jessie Street, near terminal entrance, with private car parked at left. In turning into depot, scraped right rear panel of 918 against front bumper of car 524."

He was given five demerits for that accident.

Is that one of the accidents which may have the result of being very serious, in your judgment as a safety man?

A. Serious as to cause. I don't see how serious as to results. I don't know whether there were any passengers in the buses.

Q. What do you mean by "cause"?

A. If you can't miss a bus parked, I don't see how you could miss one moving.

Q. Did you ever drive a bus?

A. Not as a regular driver. I have had them out on the road.

Q. Not as a regular driver?

A. No.

Q. Do you know anything about the demerit system? Do
517 you levy the demerits yourself?.

(Tr. 517-518):

A. No, sir.

Q. Do you advise the levying of the demerits?

A. No, sir.

Q. Well, apparently, the accidents are classified, aren't they, as to seriousness?

A. No, as to negligence.

Q. As to negligence.

When a man receives five demerits, is that serious?

A. I don't know just what system that was assessed under. There have been several changes. I would say, under our present system,

it would show, I believe, the man was partially at fault for the accident.

Q. In 1934, did you have the same system?

A. We have changed it several times. I couldn't say.

Q. Well, it is not particularly serious, five demerits, is it?

A. No, it is giving the driver a pretty good break, I would say.

Q. Giving the driver a pretty good break, you would say? You mean, he should have had more, or what?

Trial Examiner Wood. You mean, it is not serious?

The Witness. Correct.

By Mr. Shaw:

518 Q. If the man's bonus is revoked for 30 days in 1932, under the system you have, is that serious?

A. Pretty severe penalty.

Q. If his bonus is revoked for 30 days?

A. Yes.

Q. And if it is later repaid, does that still make it serious? I understand you revoke a bonus and then, after a certain period of good conduct, it is restored. Is that correct?

A. That is correct.

Q. Well now, this is revoked for 30 days. What does that mean?

A. Under that system, there were two bonuses really in one. You drew it all the time except when it was revoked. If it were revoked for 30 days, you got half of it back in 30 days, if your record was clear. You received the other half if you had a clear record for six months from the date of the infraction that caused the revocation.

Trial Examiner Wood. May I ask a question there, counsel?

Mr. Shaw. Certainly.

Examination by Trial Examiner Wood:

Q. This bonus was a matter of a $50-per year bonus, wasn't it?

A. No.

Q. What was the amount of the bonus? How much was it on a yearly basis?

519 (Tr. 519–521):

A. You mean the bonus that I have just discussed?

Q. Yes.

A. It was a half a cent a mile, all told; and I would say that that would amount to about $300 a year on 60,000 miles per operator. That would be right, wouldn't it? Yes.

Trial Examiner Wood. Let me have Board's Exhibit 30.

(The exhibit referred to was passed to the Trial Examiner.)

By Mr. Shaw:

Q. Yesterday I asked you a question about an accident down in Famosa. Do you know of an accident that happened down there?

A. I don't think you stated it in that form in your question.

Q. I asked you if you knew of an accident that happened down at Famosa, where Driver Thornhill was involved. I don't think I

gave you the name of the driver yesterday. Maybe I didn't mention it. I am sorry, but I am asking you now if you know of an accident down in Famosa?

A. I don't place it by the name. Do you know some of the facts?

Q. All I know is that Driver Thornhill was involved in a very serious accident, and there was a trial held, a suit against the company in Bakersfield.

A. Yes; I remember that one, quite well.

Q. The company lost that suit, didn't they? You had to pay damage on that, didn't you?

520 A. That is my understanding, that they lost in the Superior Court. We were insured then, and I understand, although I never checked the record, that the insurance company paid off the judgment, rather than taking an appeal.

Q. And the driver is still working, isn't he?

A. He was out of service, but I think that through the offices of the Drivers' Association he was subsequently reinstated.

* * * * * * *

Q. Well now, as a safety man—an expert in safety problems—do you consider it relevent in an accident what the fatigue of the driver happens to be at that time?

A. Fatigue is always relevent in any accident.

521 Q. Would you consider it sound safety policy to send a driver out near dusk, when he had been on a run from two o'clock in the morning until ten o'clock that morning and hadn't had sleep?

A. I would prefer that he not go out.

Q. As a safety man, it is not good policy, is it?

A. I don't think it is.

523 (Tr. 523–524):

Q. Now, you talked about the man being accident prone—sort of accident, measles, as I understand it.

Could a man who had had no accidents for a year, and had only had three responsible accidents for a period of some seven years, be referred to as being accident prone?

A. Well, he would have a proneness toward accidents, or he wouldn't have any, although I wouldn't think you would call him "accident prone."

Q. So, there is nothing in this accident prone business, as far as Sager is concerned?

A. That depends upon the types of his accidents. You have to go into the long complicated analysis. I would say.

Q. Now, did your long complicated analysis convince that Sager was "accident prone?"

A. I didn't make it.

* * * * * * *

524 By Mr. Shaw:

Q. So, you have figured Sager's case pretty closely, haven't you?

A. Well, reasonably close.

Q. About as closely as you have ever studied any case, haven't you?

A. Oh, no.

Q. In your study of Sager's case, would you say, as an expert in safety, that he was "accident prone"?

A. In the meaning of that term, I wouldn't.

Q. You wouldn't?

A. No.

525 Q. Now, when you stated that in your capacity as a safety man, you had nothing to do with the operating of the buses, had nothing to do with the operating department?

526 A. That is not correct. I make studies of accident frequencies, report them to our operating department. I am in on some of the conferences, and I think they take my advice on some matters. Then the decision rests in their hands.

Mr. SHAW. That is all.

Redirect examination by Mr. BOWEN:

Q. Mr. Hensley, where a driver has an accident so that he runs against a car that is following, doesn't that indicate to you that there is something wrong with that driver, that he is careless, or that there is something else that has happened to him, so that he doesn't have his vehicle under control?

A. I would say that that indicates carelessness of some kind on the part of the driver.

Q. And where a driver would become subject to such a condition that he would not have the vehicle under control under that condition, is that any different, as to one of those so-called rear-end collisions, than where a driver runs his bus through an open road, and puts 40 people into a river and drowns them?

A. The cause, I would judge, of both accidents to be the same.

Q. Do you know of such an accident as I have just described?

A. Yes, sir.

Q. Or, is it any different if a driver, coming around a curve approaching a small bridge, has not his bus under control, and killing half the passengers in the bus?

A. The cause could be identical.

527 Q. One of the most serious things in the bus business, isn't it?

A. Correct.

Q. Are you just as liable to have a claim for which you would be compelled to pay from a woman falling off a suit case while standing on it to get into her berth, as you are if she were hit by the bus?

A. Yes, sir.

Q. And it is the company that pays the claims, and not the drivers, isn't it?

A. Yes, sir.

Q. You have made a compilation of costs of claims in the Pacific Greyhound Lines, running over the past two years, at my request?

A. Yes, sir.

Q. Will you please state what those costs are on an annual basis for the years that you have them?

A. 1931, $197,000——

Trial Examiner Woon. Are you offering this, Mr. Bowen?

Mr. Bowen. He is taking that off the record.

Trial Examiner Woon. Did you prepare this yourself?

The Witness. I did, personally.

1931, $197,934.89.

1932, $164,166.77.

1933, $163,468.92.

1934, $190,144.75.

528 1935, $215,562.92.

The first six months of 1936, $97,048.22.

Now, those figures are not alone of actual expenditures, but they include the reserves for those cases that are outstanding, as yet unsettled.

By Mr. Bowen:

Q. That is, where you have claims against you, and they have not yet been settled?

A. We must put a reserve, as best we can determine, as to probably what they would be worth, in order to show our proper liabilities in our accounts.

Trial Examiner Woon. Has this been allocated as far as Division 4 is concerned? I take it that this is for all the lines?

The Witness. All the lines. I don't think it is allocated. Well, Pacific Greyhound Lines.

Trial Examiner Woon. And subsidiaries?

The Witness. Yes.

By Mr. Bowen:

Q. That is not for Pacific Greyhound Lines as a whole throughout the country?

A. Oh, no.

Q. If you had the figure for Greyhound throughout the country, it would be six, or probably, ten times?

A. Probably ten, or more.

Mr. Bowen. That is all.

Mr. Shaw. Just a minute.

529 Trial Examiner Woon. I wish to declare a brief recess.

(Whereupon, a short recess was taken after which proceedings were resumed as follows:)

Mr. Shaw. Are you ready to proceed, Mr. Examiner?

Trial Examiner Woon. Go ahead. The hearing is please called to order.

Recross examination by Mr. Shaw:

Q. Mr. Bowen asked you if the company wasn't responsible for a woman falling in her berth. Is there any possible way in which you, or any of the officers in the company, could discipline those

men who are driving your cars so that that kind of an accident wouldn't happen?

A. Well, I think if the accident happened, it happened because they were making a curve too fast, or hitting a bump. It would have an effect to cause them to be more careful in the future.

Q. What about the woman cutting her finger on the light in the compartment? Is there any way you can prevent that by disciplining the drivers?

A. No.

Q. And, of course, it may result in a blood-poison case, and be very expensive, would it not?

A. That would be taken up with the maintenance department to see if they could put something on the glass to make sure it doesn't break.

530 Q. In other words, the equipment does play an important part in your safety program?

A. Oh, yes; I should say so.

Q. As I understand your figures here, you have shown a total amount of claims paid of $946,000. I have added the figures you have just testified to.

A. Well, that is premiums for insurance and payments of claims. It is for damages; yes.

Q. Well, it includes premiums for insurance, though?

A. Yes.

Q. I see. You regularly charge them out of your operating funds, don't you?

A. I beg your pardon?

Q. They are regularly chargeable from your operating expenses, your premiums on insurance, aren't they?

A. I think the accounting department so charges them.

Q. Now, do you know what Mr. Sager's total expense with the company has been?

A. I do not.

Q. Well, now, did that accident that Mr. Sager had there, with the furniture truck, back in 1932, crossing a bridge, the impact, according the story told me was very small; but he lost $150 in a bonus because he had that accident, which he never recovered. In that case, Mr. Sager paid for his own accident, didn't he?

531 A. That depends on what it cost. I don't recall.

Q. Well, that is very likely to happen, isn't it, that where there is a slight accident—very small damages—the amount that is taken away from a man on a bonus will more than cover the damage, won't it?

A. That may be true, but discipline is assessed to prevent the cause that might later result in something more serious.

Q. Yes; but in a great many cases, in these small accidents, actually the drivers pay the damages, and not the company, don't they?

A. If the bonuses revoked is a sum equivalent to what the damage is, then, I guess the figures would meet.

Q. Now, you have a list of your accidents, have you, in Mr. Sager's case, and there is no statement in the statements of those cases having anything to do with weather conditions? Does that make any difference?

A. Not in counting the accidents.

Q. Well, does it make any difference in the responsibility of the driver?

A. That, and a great, great many elements must be considered in trying to determine the responsibili of the driver.

Q. Driving in a fog may be impo ant as one of these alleviating circumstances, may it not?

A. Yes. In fog you should likewise be doubly cautious in your operation.

532 Q. You only hold a driver for accidents in which he, personally, is responsible. Isn't that your theory of discipline?

A. Either responsible or partially responsible, when he may not be legally responsible, but still could have prevented the accident by being more cautious or more alert.

Q. Now, you have testified——

Trial Examiner Woon. Just a minute!

Whether or not the driver is negligent, that rests in the opinion of the company, isn't that so?

The WITNESS. Yes.

By Mr. SHAW:

Q. Now, it has been testified here, Mr. Hensley, that Sager was driving at dusk. That is a pretty dangerous time to drive, isn't it, just at dusk and just at daybreak?

A. Well, a driver should make allowance for it.

Q. There is some testimony in the record here that back in 1934 Mr. Sager backed into a milk truck driven by Mr. Eldridge, who was on the stand yesterday. Mr. Eldridge testified that Sager told him that if he wouldn't turn it in, Sager would pay the damage. Eldridge further testified that Sager told him that if it were turned in Sager would lose his bonus.

Eldridge further testified that about five days after the 533 accident Eldridge told him that the expense would be $4.

Is it conceivable that a driver would allow that $4-claim to run along for a year when the matter of his bonus, which may be $150, is involved? Is it conceivable that a driver would do a thing like that?

A. He apparently did.

Q. Well, is it conceivable that any reasonable driver with $150 involved, and an opportunity of losing his job, would allow a $4-claim to go for a year?

A. Well, under the current bonus system, I think it would have been considerably less than $150; but it is conceivable, yes.

Q. It is conceivable?

A. Yes, sure.

Q. But it is not the sort of thing an intelligent driver would do, is it?

A. I don't think so.

Q. You don't have any question as to Mr. Sager's intelligence, do you?

Trial Examiner Wood. Strike the question.

By Mr. Shaw:

Q. The bonus would be considerably more than $4, wouldn't it?

A. Yes, it would be more than $4.

Q. It would be all of $50, at least, wouldn't it?

534 A. I don't think that high, under the system that was then in force.

Q. It would also be against a man, from the point of view of his accident record, if that were turned in, wouldn't it?

A. Be tabulated?

Q. Yes, is that so?

A. That kind of an accident would be against him.

Q. Would be against him. And would any man, with all the cards stacked against him—especially Mr. Sager's case, who was busy organizing a union—would such a man conceivably allow that $4 debt to go unpaid for a year?

A. Yes, Mr. Sager did.

Q. Now, it has been testified here that $50 in damages were paid to Mr. Harnish. The release so shows it—$55 rather. Would you say that that is a very large part of $97,000 in damages paid by the Pacific Greyhound since January 1, 1936?

A. That is $55 of it.

Q. How many drivers have you got, on the system?

A. Better than 400, I believe.

Q. Well, do you believe that it is 1/400 of the expense?

A. I wouldn't say. I haven't computed it. I think it speaks for itself, whatever the figures ought to be.

Trial Examiner Wood. Please answer "yes" or "no," and we'll get along faster.

Mr. Shaw. I think that is all.

Mr. Bowen. That is all.

535 (Tr. 535–536):

By Trial Examiner Wood:

Q. I show you Board's Exhibit No. 46 for identification. That document was prepared in your office under your supervision?

A. That is correct.

Trial Examiner Wood. The document will be received in evidence as Board's Exhibit No. 46.

(The document referred to was received in evidence and marked "Board's Exhibit No. 46, witness Hensley.")

By Trial Examiner Woon:

Q. There is a heading on it, "Other Accidents."

Will you please read each one of them very carefully, specifying each for the purposes of identification by the date listed in the left-hand margin, and state whether, in each one of those cases, the driver was negligent?

A. [Reading exhibit.] August 3, 1929; Backing bus on water hydrant to clear other cars——

Q. (Interrupting.) It isn't necessary to read the statement here. If you will just state whether, in your opinion, the accident
536 listed under that date was one involving the drivers' negligence?

A. That is a backing accident, where the bus hit a standing car. That indicates negligence on the part of the driver.

Q. Your answer to that August 3 accident—August 3, 1929—would be yes?

A. May I ask a question?

Trial Examiner Woon. Off the record.

(Whereupon followed informal remarks off the record.)

Trial Examiner Woon. On the record, please.

By Trial Examiner Woon:

Q. Repeat the statement, please.

A. As to the accidents appearing under the heading "Other Accidents" offhand, on the information appearing on this record, some of them would tend to indicate negligence on the part of the drivers. Others would not. To actually determine these matters would depend on all of the circumstances revealed by the investigation at the time the accident occurred.

Q. Were each one of those investigated by you, or by someone in your office, in making up that record?

A. Either that, or the investigation was submitted to my office. They all find their way into the files, everything.

Q. As a result of the investigation made of the accidents listed under Other Accidents, the driver was not penalized, I take it? Is that true?

A. That is correct, but that doesn't—it isn't conclusive that he wasn't negligent.

537 (Tr. 537–538):

Q. But, as far as your records in your office are concerned, isn't it your purpose in listing them under Other Accidents, to excuse the driver from any implication of negligence in connection with those particular cases?

A. It is not; it is merely to show that discipline was not assessed.

Q. Now, will you please proceed as you started out, and tell me whether, in your opinion, in each one of the cases listed under the heading Other Accidents the driver was negligent, and you may answer yes or no. I think the explanation, as already made, is sufficient to cover a general statement.

A. 8-8-29—that is August 8, 1929—indicates negligence.

11-17-29—I don't know. On the face of it it doesn't.

3-5-30—on the face, it appears as though the driver might have been contesting the intersection, and there might have been negligence.

Q. Your answer to that is yes?

A. Yes.

5-13-30; no.

7-8-30; as set up here the answer is no.

7-13-30; yes.

8-27-30; no.

10-5-30; no.

4-25-31; yes.

8-7-31; no.

538 12-22-32; no.

1-6-33; does not say whether the bus was in motion. In the absence of that, I don't know.

5-16-34——

Q. Now, just a minute! As to 1-6-33—that is the one where the woman passenger slipped in getting into her berth. On the facts, as they are stated, can't the question be answered?

A. On those facts, no.

5-16-34; no.

8-12-34; the facts stated, no.

Q. Now, as to the ones which you answered "yes" you personally don't know whether, as a result of the investigations made, the driver was excused from responsibility?

A. I take it there must have been extenuating circumstances; but, I don't know that to my personal knowledge.

Q. Well, there are drivers that for various reasons, such as good past records, may be excused?

A. Yes; where I would be satisfied, in my mind at least, that they might not be somewhat negligent.

Q. But, usually, you don't excuse negligence, I take it, is that right?

A. As a customary matter, we are pretty severe when negligence is involved. By that, I mean we are pretty sure of assessing some type of discipline.

541 (Tr. 541-542:)

Q. Have you such history records, and I refer again to Board's Exhibit No. 46 for all the drivers available?

A. Not available; it could be made up.

Q. In other words——

A. (Interrupting.) It would be a tremendous task.

Q. (Continuing.) This was made up for purposes of the 542 hearing?

A. Correct.

Q. What witnesses, besides the witness Sharland, expressed the opinion that the driver was not to blame for the Hamilton accident?

A. I think there was a witness in Oakland who said that the driver wasn't to blame.

Q. Any others?

A. Shields, I believe, placed the bus and the Chrysler next to the lane in the street car tracks. The others—you know, that was a duplex. The others, more or less, said they were not in a position to see. Some said the bus was going fast. There was quite a conflict.

Q. There was quite a conflict?

A. Yes.

Q. About how many statements were taken in all, do you recall, from the passengers aboard the bus?

A. I believe, seven.

543 (Tr. 543-544):

Recross examination by Mr. SHAW:

Q. When was statement of Sager prepared?

A. It may be dated; I don't recall. It was here the past [pause] it was within the past couple or three weeks, I guess.

Q. Would you say, since the first day of May, wasn't it?

A. It must have been.

Q. Now, did you get that material at random through your files?

A. Well, it is tabulated on one side by code numbers, but to get the material you have to dig through the files.

Q. Were those files ever dug through between the time of the accident and the time Mr. Sager was discharged?

A. Well, I don't know. I know that somebody is digging through drivers' personal records all the time.

544 Q. But they never came to you with a request to prepare such a history prior to about three weeks ago?

A. No.

L. D. JONES, called as a witness for the Respondent, having been duly sworn, testified as follows:

DIRECT EXAMINATION

* * * * * * *

(Tr. 544):

By Mr. BOWEN:

Q. And what position do you hold?

A. General manager, Pacific Greyhound Lines.

Q. Of what?

A. Pacific Greyhound Lines, Inc.

* * * * * * *

Q. And just describe generally what your duties are in connection with that position?

A. General supervision over the entire Pacific Greyhound Lines.

546 (The document referred to was marked "Respondent's Exhibit No. 7, for identification.")

By Mr. BOWEN:

Q. Showing you Respondent's Exhibit No. 7, for identification, is that a copy of the so-called Drivers' Manual?

A. (Examining exhibit.) Yes, sir; Drivers' Manual No. 1.

Q. And that is placed in the hands of all drivers?

A. Yes, sir.

Q. And that provides for their conduct and rules of driving?

A. Yes, sir.

Trial Examiner WOOD. Is No. 1 the latest manual?

The WITNESS. It is the only manual that has ever been put out.

Mr. SHAW. No objection.

Trial Examiner WOOD. You intended to offer the last document?

Mr. BOWEN. I am now offering it.

Trial Examiner WOOD. Respondent's Exhibit 7 is received in evidence.

(The manual referred to was received in evidence and marked "Respondent's Exhibit No. 7.")

By Mr. BOWEN:

Q. Has that Manual been added to, from time to time?

A. There have been bulletins issued, but the Manual itself
547 has never been re-issued.

Q. That is, besides this Manual, there are also bulletins that cover conduct of drivers?

A. Yes, sir.

Q. Are there also orders issued by the Railroad Commission of the State of California, relative to safety requirements and operation of vehicles that are operated under Certificates of Convenience and Necessity in the State of California?

A. Yes, sir.

Mr. BOWEN. Mr. Reporter, will you mark this as Respondent's Exhibit for identification, next in order?

(The document referred to was marked "Respondent's Exhibit No. 8, for identification.")

By Mr. BOWEN:

Q. Showing you Respondent's Exhibit No. 8, for identification, General Order, No. 86, Railroad Commission of the State of California, is that a general order of that regulatory body of the State of California?

A. (Examining exhibit.) It is.

Q. Governing the operation of so-called stages?

A. It is.

Mr. BOWEN. We offer Respondent's Exhibit No. 8 in evidence.

Mr. SHAW. No objection.

Trial Examiner WOOD. Respondent's Exhibit No. 8 is received in evidence.

(The document referred to was received in evidence and marked "Respondent's Exhibit No. 8.")

Trial Examiner Wood. Counsel, may I ask you to indicate, please, what part of the last exhibit you wish particularly called to the attention of the Examiner?

Mr. Bowen. The last exhibit is not a very long document; but, specifically, I call attention to the Qualifications of Drivers, which is marked Section 6; Section 7 refers to smoking of drivers.

Trial Examiner Wood. Well, certainly, there is no reason to call that to my attention.

Mr. Bowen. Well, it governs the conduct of the operators of these motor vehicles.

Trial Examiner Wood. I know, but there is nothing charged relating to smoking in this case.

Mr. Bowen. And Section 11, "Duties of Drivers"; Section 23, "Careful Driving."

Trial Examiner Wood. Thank you, very much.

Mr. Bowen. Mr. Reporter, will you mark this as Respondent's Exhibit for identification, next in order?

(The document referred to was marked "Repsondent's Exhibit No. 9, for identification.")

By Mr. Bowen:

Q. I show you Respondent's Exhibit No. 9 for identification, Motor Vehicle Code of the State of California.

Is that the laws of the State of California relating to the operations of motor vehicles on the highway, including Pacific Greyhound Lines?

A. Yes, sir.

Mr. Bowen. We offer in evidence Respondent's Exhibit No. 9.

Mr. Shaw. Well, I have no objection. I don't see why we need the whole thing in, but maybe counsel has a reason.

Trial Examiner Wood. I note that it is a rather voluminous document that is now being offered. Perhaps, counsel could specify and stipulate, rather than offer such a voluminous exhibit.

Mr. Bowen. I will refer those provisions of it, which I specifically wish to call the Examiner's attention to:

Chapter 6, relating to speed, commencing on page 99;

Chapter 7, commencing on page 103, relating to Overtaking and Passing; and, also,

Chapters 1 and 2 of Division 4, relating to Civil Liability and Financial Responsibility Laws.

Trial Examiner Wood. I shall take my ruling on that document under advisement. I don't see any purpose in crowding the record up with voluminous exhibits. I shall be glad to have you make a very specific statement as to what it is there, but I do object to the record being so voluminous in the matter of documents, although, in that respect, I wish to excuse counsel for the Respondent.

Mr. Bowen. I sympathize with the view of the Examiner, and I would take it that in a regular court procedure, the mere reference to these documents would be sufficient to give the Board judicial recognition of them.

Trial Examiner Wood. That is very true.

Mr. Bowen. I am perfectly willing to proceed with that understanding. I would take it that this Board would have the right to take judicial cognizance of any laws.

Trial Examiner Wood. I have no doubt about that. I do question that, perhaps, the availability of the Motor Vehicle Law in the library is available to the Board, but, I think, it could undoubtedly be obtained in Washington.

Mr. Bowen. I think that is true; and, also, if we wish to present anything to the Board on it, why, we could have it quoted.

Trial Examiner Wood. I should think that you might withdraw the exhibit, and have the Board take judicial notice of it.

Mr. Bowen. I will withdraw Respondent's Exhibit No. 9, with the understanding that a reference to those laws, which are the Motor Vehicle Code of the State of California, may be made by reference, and that the Board will take judicial cognizance of them.

551 Mr. Shaw. No objection on my part.

Mr. Bowen. And I would also ask the Board by reference, to take official cognizance of the Public Utility Acts of the State of California, which cover the issuance of Certificates and Franchises.

Trial examiner Wood. You might be good enough again to specify the particular sections of that Statute.

Mr. Bowen. That Statute relates, practically, to the entire volume that I have. I can refer to the specific law.

Trial Examiner Wood. To what extent does it concern us here? Let me phrase it that way?

Mr. Bowen. Well, it goes to a point, Mr. Examiner, of our contention that we are operating these vehicles under the laws of the State of California, and in intrastate commerce; and that they do not come within the definition of interstate commerce.

The Act of the State of California, which I wish specifically to refer to, is the Public Utility Acts, with the 1935 amendments, enacted in 1911, Chapter 14, page 18, together with subsequent amendments thereto.

Trial Examiner Wood. May I see the last two documents?

Mr. Bowen. Yes.

(The documents referred to were passed to the Trial Examiner.)

Trial Examiner Wood. As to the document last referred to,
552 being the Public Utility Acts, I shall ask that that be offered in evidence as Respondent's Exhibit No. 10.

Please so mark it, Mr. Reporter.

(The volume referred to was marked "Respondent's Exhibit No. 10, for identification.")

Mr. BOWEN. We offer in evidence Respondent's Exhibit No. 10, being the Public Utility Acts of the State of California.

Mr. SHAW. No objection.

Trial Examiner WOOD. The document is received in evidence.

(The document referred to was received in evidence and marked "Respondent's Exhibit No. 10.")

Mr. BOWEN. Mr. Reporter, will you mark these four documents as Respondent's Exhibits for identification, next in order?

(The documents referred to were marked "Respondent's Exhibits Nos. 11, 12, 13 and 14, for identification, respectively.")

By Mr. BOWEN:

Q. Mr. Jones, I show you four exhibits, marked Respondent's Exhibits Nos. 11, 12, 13 and 14, respectively, and ask you to state, just generally, what those exhibits are.

A. (Examining exhibits.) Exhibit No. 11 is bulletin No. 24. That was issued to all drivers on Speed.

Exhibit No. 12 is bulletin 21, dated August 21, 1935, issued to all drivers, regarding Speed.

553 Exhibit 13 is bulletin No. 17, issued July 20, 1934, to all employes, and referring to Speeding, particularly.

Exhibit No. 14 is bulletin No. 14 issued May 9, 1934, issued to all drivers, and refers to Speeding.

Q. Those are bulletins that are issued in the regular course of the operation of the Pacific Greyhound Lines, and supplement the Rules and Regulations, the Manual of the drivers?

A. That is correct.

Mr. BOWEN. We offer in evidence Respondent's Exhibits Nos. 11 to 14 inclusive.

Mr. SHAW. No objection.

Trial Examiner WOOD. Respondent's Exhibits Nos. 11 to 14, inclusive, are received in evidence.

(The documents referred to were received in evidence and marked "Respondent's Exhibit No. 11," "Respondent's Exhibit No. 12," "Respondent's Exhibit No. 13," and "Respondent's Exhibit No. 14," respectively, Witness Jones.)

Trial Examiner WOOD. We shall recess until 2 p. m.

(Thereupon, at 12:30 o'clock p. m., a recess was taken until 2:00 o'clock p. m.)

554 AFTER RECESS

(The hearing was resumed at 2:00 o'clock p. m., pursuant to the taking of recess.)

Trial Examiner WOOD. The hearing is please called to order.

Mr. BOWEN. Mr. Reporter, will you mark this Respondent's Exhibit for identification, next in order?

(The document referred to was marked "Respondent's Exhibit No. 15, for identification.")

Mr. BOWEN. I have Respondent's Exhibit No. 15, for identification, which is headed "Digest of Agreement and Rules Governing Rates of Pay, Bonus and Working Conditions of the Drivers of Pacific Greyhound Lines, Inc." This document, together with the two documents that have been introduced by the Board, constitutes the constitution and by-laws, and the present working agreement of the Drivers Association of the Pacific Greyhound Lines, Inc.

I offer that in evidence.

Mr. SHAW. No objection.

Trial Examiner WOOD. Respondent's Exhibit No. 15 is received in evidence.

(The document referred to was received in evidence and marked "Respondent's Exhibit No. 15.")

Mr. BOWEN. Mr. Reporter, will you mark this as Respondent's Exhibit for identification, next in order?

555 (The document referred to was marked "Respondent's Exhibit No. 16," for identification.)

Mr. BOWEN. Respondent's Exhibit No. 16, for identification, is headed "Changes in Drivers' Working Agreement, Subsequent to October 1st, 1933," as contained in the Digest.

These changes are contained in Exhibit 15, but this is a resume to show the changes that were made from the prior agreement, and the subsequent one, which is now in effect. It is more for the purpose of permitting an analysis of the two working agreements, and we offer Exhibit No. 16 in evidence.

Mr. SHAW. No objection.

Trial Examiner WOOD. Respondent's Exhibit No. 16 is received.

(The document referred to was received in evidence and marked "Respondent's Exhibit No. 16.")

Mr. BOWEN. Mr. Reporter, will you mark this as Respondent's Exhibit, for identification, next in order?

(The document referred to was marked "Respondent's Exhibit No. 17," for identification.)

Mr. BOWEN. Respondent's Exhibit, which has been marked 17, for identification, is "Changes in the Drivers' Working Agreement—" Strike that out, please!

Respondent's Exhibit No. 17, for identification, is the changes 556 in the drivers' working agreement, subsequent to the issuance of Exhibit No. 15. That is, containing the changes in that agreement down to date.

Trial Examiner WOOD. That is, since what date, then?

Mr. BOWEN. Subsequent to the issuance of Digest on April 1st, 1935.

We offer Exhibit No. 17 in evidence.

Trial Examiner WOOD. Mr. Shaw?

Mr. SHAW. Has the exhibit been offered?

Mr. BOWEN. Yes.

Mr. SHAW. I have no objection.

Trial Examiner Woon. Respondent's Exhibit No. 17 may be admitted.

(The document referred to was received in evidence and marked "Respondent's Exhibit No. 17.")

Mr. Bowen. Mr. Reporter, will you please mark these documents as Respondent's Exhibits Nos. 18 to 22, inclusive, for identification?

(The five documents referred to were marked as "Respondent's Exhibits Nos. 18, 19, 20, 21, and 22," for identification, respectively.)

Mr. Bowen. The Respondent, Pacific Greyhound Lines, Inc., will withdraw reference to the Vehicle Code of California, 1935, which has been marked as Exhibit 9.

Trial Examiner Woon. It had been marked Exhibit 9 and 567 was withdrawn; but, then, there was reference made to the record as to the Statute, and I take it counsel is now referring to the Statute; and, likewise, is withdrawing his request that the Board take judicial notice of that Statute.

Mr. Bowen. That is perfectly agreeable to counsel for the Respondent, with the understanding that we do not waive whatever rights we might have upon a legal argument as to the laws.

Trial Examiner Woon. So understood.

Mr. Bowen. There have been marked for identification Respondent's Exhibits Nos. 18, 19, 20, 21, and 22, for identification, which are copies of bulletins of the Brotherhood of Locomotive Firemen and Enginemen, issued to the bus drivers on Pacific Greyhound Lines, Inc.

Respondent's Exhibits Nos. 18 to 22, inclusive, are offered in evidence, subject to the checking by the attorneys for the Board and the representatives of the Brotherhood for such corrections as they may feel should be made.

Trial Examiner Woon. Mr. Shaw?

Mr. Shaw. I have no objection to the introduction of the exhibits at this time. Mr. Phillips advises me they are correct copies—the ones he has examined.

Trial Examiner Woon. Respondent's Exhibits 18 to 22, inclusive, will be received.

(The bulletins referred to were received in evidence and marked "Respondent's Exhibits Nos. 18, 19, 20, 21, and 22, respectively.")

568 Mr. Shaw. I should like to call attention at this time to the record that Respondent has objected to all of the introduction of my testimony of 1935, upon the ground that it is incompetent, irrelevant, and immaterial.

I want to call attention that I am not objecting at this time to this evidence.

Mr. Bowen. Well, it is introduced, of course, to meet the evidence that was introduced over our objection.

L. D. JONES, called as a witness for the Respondent, having been previously duly sworn, resumed the stand, and further testified as follows:

By Mr. BOWEN:

Q. Mr. Jones, how long have you been with the Pacific Greyhound Lines in your present capacity?

A. Since its organization, 1930.

Q. And were you connected with bus operation prior to that time?

A. I was with the Pickwick Stages prior to that time, and also the Southern Pacific Motor Transport Company.

Q. And you are familiar with the policies of the Respondent, Pacific Greyhound Lines, relative to its dealings with its employes?

A. I am.

Q. And you have very close contact, I think you testified, with those employes?

559 By Mr. BOWEN:

Q. You are familiar with the requirements of the National Labor Relations Act under Sections 7 and 8 as to the rights of employes to join a labor organization, to chose their representatives and bargain collectively?

A. I am.

Q. And are familiar with Section 7 of the National Industrial Recovery Act?

A. I am, and I was.

Q. Will you state what has been the policy of the company towards its employes in regard to the direction of these two Acts?

560 A. The company's policy has been, and the officials have all been instructed in talking to the men, to tell them it is within their rights to join anything they want.

Q. Have you ever denied to any of the employes their right to join any labor organization?

A. No, sir.

Q. Or, have you ever threatened them with discharge or any other manner of consequences if they did not?

A. No, sir.

Q. Have you ever removed from service an employe for exercising those rights to which he is entitled?

A. No, sir.

Q. Have you, Mr. Jones, talked with the employes relative to their rights and relative to the position of labor organizations?

A. I have.

Q. And have you talked to employes and to Mr. Sager, in particular, relative to the Brotherhood of Locomotive Firemen and Enginemen?

A. I have.

Q. Will you go ahead and state what has been said in that regard, and what has been the statement or statements of you and other officials of the company, that you are familiar with?

A. I have always prefaced my remarks made to any employes, talking to them personally, or in meetings, of which I have held several, that it is within their rights to join any organization
561 that they wanted to join. However, I have advised them not to join a Brotherhood of railroad firemen, so far as I was personally concerned, because I didn't believe it was within the interests of themselves or the company, inasmuch as the railroad organizations have always been against the encroachments, as they call it, of buses and trucks on the highway; and have religiously fought it, and we did not feel, and it has not been the policy of the officials—and our officials have been so told—that it would not be well to have an organization that was directly competitive with us, representing our men.

Q. At the same time that you had made those statements to the employes, have you also, at the same time, advised them of their rights to join the Brotherhood, or any other labor organization, if they so chose?

A. I have always prefaced my remarks with that to start.

Q. The company is also charged with dominating and interfering with the formation and administration of the Pacific Greyhound Drivers' Association.

What are the facts in relation to that?

A. Not within my knowledge; none of the officials have ever done it.

Q. Have the employes been free to run that organization as they saw fit?

A. Absolutely.

Q. You are aware that many of them belong to that organi-
562 zation, are you not? I mean, do you know, Mr. Jones, as to how many of the drivers belong to that organization, and authorized deduction from their pay for dues?

A. I do not.

Q. You know that there are many?

A. Yes. I know most of them do; but as to the exact number, I could not state.

Q. Are you aware also that many of the drivers belong to the Brotherhood of Locomotive Firemen and Enginemen?

A. I have had several drivers tell me that they belonged.

Q. There has been evidence put into the records seeking to prove that a driver named Perryman and a driver named Seeman were discharged because of activities in connection with labor movements and labor organizations. Is that so?

A. That is not.

Q. Are you familiar with those cases?

A. I am.

Q. And was their discharge connected in any way at all with activities in connection with labor organizations or labor movements?

A. No, sir; just for violation of rules.

563 Q. Has there, from time to time, been received by you, warnings from the State Railroad Commission as to speeding on the highway?

A. Several times.

Q. And has it been your duty to take that up with the drivers and employes?

A. It has, both by bulletins and in meetings.

Q. And you have done so?

A. I have.

Q. There is also at this time, is there not, a serious threat to the operation of Pacific Greyhound Lines by application of the bus line of the Santa Fe Railroad?

A. Very serious.

Q. And that case is now before the State Railroad Commission?

A. Yes, sir.

Q. In connection with that case, state whether you are aware that Santa Fe has investigators out for the purpose of checking your operations to determine any violation of laws and traffic rules, which may be evidentiary in that proceeding?

564 A. I am.

Q. Are you aware that there is always a serious threat with the loss of your operating franchises by reason of violation of State Laws and Regulations of the Railroad Commission?

A. Yes, sir.

Q. Have you knowledge of companies whose franchises or Certificates of Public Convenience and Necessity have been revoked for such purposes?

A. I have.

Q. And is that one of the compelling reasons that it is necessary to have a close check upon the personnel of drivers and their discipline in the matter of operation on the highway?

A. It is.

Q. Are you aware of motor bus officials that have been indicted for manslaughter in connection with operations by drivers of their vehicles on the highway?

566 By Mr. Bowan:

Q. Will you explain, Mr. Jones, how you came to write that Exhibit 29, and return his Christmas present?

A. Mrs. Sager brought the wallet in to me some time during the Summer, I believe, and I had known Mrs. Sager and Mr. Sager since 1928. In fact, I employed Mr. Sager through a friend of mine, who asked me to.

At the time it was given to me I considered it more of a personal matter than an official matter. I was busy at the time, and laid the package on the desk, to the rear of my flattop desk, and left town; didn't pay any further attention to it until about a month later. Mr. Krug came into my office one day, and said, 'I was talking to a driver down at Santa Cruz by the name of Thompson and he

advises me you carry a card in the Brotherhood, that you are in favor of the Brotherhood, and that the Brotherhood drivers have given you a wallet for Christmas."

567 I then opened the package up, and found out what it was. As I am in a position between the men and the company, in a way, I have tried to remain neutral in every way. I, therefore, immediately, through a personal letter—although it is on my official stationery—returned the wallet to Dick Sager, and explained why, and asked him to straighten it out in the minds of the men that I did not belong to the Brotherhood, and had never carried a card in it.

Q. In writing that letter you had the object of not being charged among any group of drivers with favoring one organization or the other?

A. That is true.

571 By Mr. SHAW:

Q. Can you tell me why Perryman and Seeman were not put back to work?

A. Mr. Perryman was fired because he was arrested and failed to report to his superintendent. We didn't consider him satisfactory as a driver.

Mr. Seeman was discharged because of delaying schedule, and smoking within the station; and was not properly performing his work. We did not consider him the proper type of driver.

573 CROSS EXAMINATION

(Tr. 573–575):

Q. Now, a number of documents have been presented here containing the Drivers' Association's contracts and By-Laws and the constitution. Were these prepared in the company's office?

A. That, I couldn't say. I will say this: That I have loaned my secretary to the Drivers' Association many times when they wanted something written up. It is possible that they were.

Q. The Drivers' Association pays for that service?

A. No, I believe we gave it to them, as far as I know. We helped them out whenever they requested help.

Q. Meetings are held on company property, aren't they?

A. Yes, we have provided quarters for them, if they wanted them.

Q. I see.

You had a meeting here, April 1, 1935; another in December 1935, and another one in June 1936. Now, how were those meetings called? Do you recall?

A. The first two you referred to were at the request of some of the drivers. The men were invited in; and the last one you referred to, the men came in at their own initiative. In fact, I didn't know they were coming. Part of them were in Los Angeles, and I happened to be talking to Mr. Hodge on the 'phone, and he told me they were on their way to San Francisco.

574 Q. Now, they have to come up here and incur some expenses in coming here?

A. Yes.

Q. Who pays that expense?

A. Why, when we have called them in, we have allowed them their wages.

Q. You also pay their transportation, too?

A. They have passes.

Trial Examiner Woon. On the occasion referred to, I take it you didn't call them in. Now, as to the payment of expenses on that occasion, do you recall?

The Witness. No; I didn't happen to meet with the boys, while they were in, Mr. Examiner.

Trial Examiner Woon. Do you know whether the expenses were paid on that occasion?

The Witness. No, I do not.

By Mr. Shaw:

Q. And at such time they have some expenses? That is, if they are called to San Francisco, they have to live here. How are those expenses cared for, do you know?

A. I believe their association [pause] it is taken out of their association accounts. We don't pay them, I know that.

Q. They are not entitled to be represented before the management by anybody who is an outsider, are they?

A. No. Under the agreement that we are working with the association, they are entitled to either present their case, or
575 through their representative, or both.

579 (Tr. 579):

Q. You knew of Camy's work?

A. I have known Camy's work for several years.

Q. Very satisfactory driver, wasn't he?

A. What contact I had with him, he has been all right.

Q. You never heard anything against him, did you?

A. Not until this came up.

Q. Well, what was Mr. Sager's reputation as a driver, Mr. Jones?

A. Mr. Sager's was, what I would call, a fair driver.

Q. By "fair" what do you mean?

A. Well, what I mean, he is an ordinary driver. He isn't good or he isn't bad. It is between what is the ordinary run of drivers.

580 (Tr. 580-581):

Q. And he had a pretty good record?

A. I would say it is a fair record; yes.

Q. By "impulsive" you mean a fellow with a lot of initiative?

A. Yes; he has initiative. Then, he gets a notion, and he goes off on it right quick. You don't know what is going to happen.

Q. Do you try to encourage initiative among your employes?

A. In the right way, very much so.

Q. Did you have any check-up of passengers as to their treatment by the various bus drivers?

A. Yes; we checked them ourselves.

Q. I mean, the drivers have sort of a fan-mail, don't they?

581 A. Yes; we get commendations and we get criticisms; lots of them.

Q. Do you recall what Sager's record was along that line?

A. No; I do not, Mr. Shaw. I don't know that.

Q. It is true, isn't it, that the company had known for a long time that Sager was very active in this Brotherhood work?

A. Yes.

Q. You had known it yourself?

A. Yes; I talked to him on it several times.

Q. Yes.

Did you know that Camy was?

A. No; I did not.

Q. You, personally, didn't know that?

A. I did not.

582 (Tr. 582):

Redirect examination by Mr. BOWEN:

Q. Mr. Jones, do you feel that the company has quite an investment in a driver who has been with the company for quite some time?

A. Yes; very much so.

Q. What do you mean by that? Will you please explain?

A. I feel, to have an experienced driver—and we worked it out some three or four years ago when the safety contest was un-

583 der way very strenuously—that it cost us approximately $1,500 to break in a driver.

Q. So, from a monetary standpoint alone it is good policy of the company not to let a good driver go?

A. It has been our policy not to let a driver go unless we are practically forced to do it. In fact, let me state this: That the instructions to the superintendents are, that whenever there is a question of doubt, they will give it to the driver at all times.

586 (Tr. 586–587):

By Mr. SHAW:

Q. You said your instructions to the superintendents were, where it is a question of doubt, to give the driver the doubt. Is that correct?

A. That is right. Those are the instructions.

Q. Well now, if, after an accident, the driver had turned in a report absolving himself, and the only other report, which was in the hands of the superintendent, was the report of the person with whom he had an accident, and it turns out that the driver is discharged, and the person who had the accident with the bus is paid off, and the case is settled, would you say that the benefit of

587 the doubt had been given to the employe or the driver?

A. I would say it depends on the circumstances and what the investigation brought out.

(Tr. 587–588):

Examination by Trial Examiner Wood:

Q. Mr. Jones, I understood you to say that Sager was an average driver, an average run of driver. Is that still your opinion?

A. Yes, sir.

Q. If the company were to discharge its average run of drivers, what would be the result, if you know?

A. [Pause.] Of course, we have no intention, so I could not answer that question.

Q. Well, your average run of drivers are your backlog of drivers, from which your profits are made, are they not?

A. Yes, I would say that is true. What I meant by that, Mr. Examiner, was that we have what we term a good driver who goes out of his way to perform his services and take care of his passengers, and do his work.

Then, we have those that go along, do their work, very
588. little difficulty. Then, we have those that we have trouble with, and are continually making mistakes.

Q. Well, Sager was not in the last category?

A. No, sir; I said "average."

589 (Tr. 589–591):

Q. Is it, or is it not true that there have been other rear-
590 end accidents for which the man has not been discharged?

A. Yes, that is true.

* * * * * * * *

Q. Is it your opinion that a man can faithfully perform his duties and organize during his leisure time?

A. Well, if he did not devote too much time to it, I don't see any reason why he couldn't so far as his physical ability
591 is concerned.

What we are actually concerned in, naturally, is to see that the man has the proper rest and is in proper condition to go out on his run.

Q. But, aside from him getting a normal rest, you would say that he could faithfully perform his duties and still organize on his leisure time?

A. I would say it was entirely up to the individual. Some of them could and would do their work; and others wouldn't.

Q. Do you know what the company policy is as to men doing that?

A. Well, we have had several men do it. We have never dismissed a man for doing it. We have known it has been going along for some time.

Q. Do you know any facts indicating what the attitude of Mr. Travis is toward that?

A. Except in my talks with him, and he knew that it was going on by several drivers.

Q. What has he said?

A. He has never said anything about it. He will ask me, "Is so-an-so organizing?"

I will say, "Yes, I understand he is."

Q. What did you gather from those conversations?

A. More than anything, that he was getting information as to what was going on within his organization.

593 (Tr. 593–594):

Q. Do you recall when the first inquiries were made as to forming a company union?

A. As I recollect, it was in August, 1933.

Q. When did it first come to your attention?

A. At that time.

Q. And how?

A. By six drivers, as I recall. They came to me and stated they were interested in forming an organization to deal with the company.

Q. Did they have any ideas as to what to do?

A. Frankly, they came to me and asked my help.

Q. What help did you give them?

A. I had one of our men, who is now the head of the I. C. C. Motor Bus Division, take all of the different organization books, including the Firemen, Trainmen, American Federation of Labor [pause] oh, he must have used at least a dozen or fifteen; and I told him to set up a plan, and make it liberal, so that there would be no question on the men's part to give the men something to work on in forming an organization.

He did that, and I turned it over to the men.

Q. Did he have any company union setup to go by also?

A. I believe he did—the shop crafts of the S. P. railroad at the time.

Q. Did he have any others, if you know?

594 A. Not to my recollection.

Q. Did you check his work to see what he had done, after it?

A. I read it over, I believe, at the time; just read it through was all, to see that it was liberal.

Q. Did you suggest that they put any specific provisions in that agreement as to taking up matters of working conditions with the employers, and how these matters should be presented to the management?

A. No; I don't believe I did at the time.

Q. Did the omission of that arouse your curiosity in any way?

A. No; there was a plan set up providing for the men dealing with the management, and arbitration in the event they couldn't get together.

595 (Tr. 595):

Trial Examiner Wood. On the record.

By Trial Examiner Wood:

Q. Have there been any amendments to the by-laws that you know of, Mr. Jones, since the draft which we have in evidence?

A. No, sir.

Q. So far as the participation of the company in the activities of the company union, as evidenced by the documents now in the record, would you say that the company policy is still the same as it was when those documents were drafted?

A. I believe that is correct. There has been no activity on the part of the company, of course, within the last two years, on them, Mr. Examiner. It has gone along. The men have held their meetings, and every so often they are asked for certain changes. After the changes were asked for, they have called me in on it, discussed them with me, and the changes have been made.

Mr. SHAW. May I make a statement for the record?

Trial Examiner WOOD. One moment [examining exhibit].

By Trial Examiner Wood:

Q. So that, you would say, so far as these exhibits that have been offered in connection with the company union, they still represent the company policy?

A. Yes, sir.

* * * * * * *

596 (Tr. 596–597):

Q. Did you have anything to do with the writing of the Drivers' Agreement?

A. No; I did not write the Drivers' Agreement. I did, the constitution and by-laws. I had Mr. Sheehan do it for me.

Q. Well, going back to the constitution and by-laws, who is Mr. Sheehan?

597 A. He is now head of the accounts of the I. C. C. on buses and trucks.

Q. Is Mr. Sheehan a lawyer?

A. No, sir.

Q. Do you know what legal advise, if any, the group had in drawing the company union by-laws?

A. Yes; Mr. Travis told them they could use Judge Lucas whenever they saw fit.

Q. Do you know whether or not Judge Lucas drafted the by-laws?

A. I believe he sat in with them on it. As to whether he actually drafted them, I couldn't say; but he did sit in with the men, I know, and conferred with them at the time.

Q. Now, as to subsequent amendments, has Judge Lucas participated in the drafting of subsequent amendments?

A. There have been no amendments to the by-laws or constitution.

599 (Tr. 599–600):

Q. What happened about this other independent organization [addressing counsel] Brotherhood of Motor Vehicle Drivers, Mr. Shaw?

Mr. SHAW. Brotherhood of Motor Bus Operators, it is.

The WITNESS. Well, that only developed, as far as I know, on
600 one division. It didn't get very far. It didn't get very far. It didn't go to the other divisions, as far as I know.

By Trial Examiner WOOD:

Q. What did the Division Superintendent inform you about that attempt?

A. In fact, he didn't know it. I told him about it.

Q. On what division was that?

A. Division 5. It runs from here to Grant's Pass, by way of Eureka.

Q. Do you recall who brought it to your attention?

A. One of the drivers.

(Tr. 600-601):

Recross examination by Mr. SHAW:

Q. Backing into another one of your buses is a pretty serious accident, isn't it, Mr. Jones?

A. Well, backing in isn't near as serious as running in.

Q. Well, running into one, having a rear-end collision, is pretty serious, isn't it?

A. I would say it was.

Q. Do you know Mr. Manning?

A. Yes; I knew him.

Q. He had one of those accidents, did he?

A. He did.

Q. He wasn't discharged?

601 A. He was not, that is true.

602 (Tr. 602):

By Mr. SHAW:

Q. Sager's great trouble wasn't his driving ability. It was his initiative, wasn't it?

A. Yes; Sager can drive.

603 (Tr. 603-604):

Q. Now, the men are allowed to solicit memberships in the company union at any time, aren't they?

A. Well, there has never been any ruling on it. Frankly, I
604 couldn't tell you when they did solicit them.

606 (Tr. 608-609):

Examination by Trial Examiner WOOD:

Q. Mr. Jones, I show you Respondent's Exhibit 15, and call your attention to the heading "Notice of Change in above Rules and Regulations," on page 10, and I ask you to read that paragraph there and the two paragraphs on the following page, and tell me the purpose of those provisions?

A. [Reading exhibit.] Those three were all put in—particularly the last two were put in—at the request of the Drivers. The working

conditions on divisions are different, on account of the small and larger divisions, where we have over 30 men on one, and over 100 on the other.

They wanted, as long as it didn't affect the by-laws of the constitution, to be able to make local arrangements with their superintendent of that division, and vote separate from the system.

Q. Do you know whether the draft of the last two paragraphs which is here contained, is the draft that was submitted by the drivers?

A. So far as I know, this was submitted by the drivers; but, as I state, Judge Lucas sat in with them and what he might have had to do in helping them out with words, I don't know.

609 JOHN W. KRUG, called as a witness for the Respondent, having been first duly sworn, testified as follows: (Tr. 609–610):

DIRECT EXAMINATION

610 Q. And are you employed by Pacific Greyhound Lines, Inc.?

A. I am.

Q. In what capacity?

A. As Superintendent of Operations.

Q. And how long have you been employed by Pacific Greyhound Lines?

A. By Pacific Greyhound Lines, since January, 1930. Prior to that time, by the Pickwick Stages System, and the Southern Pacific Motor Transport Company.

Trial Examiner Wood. Did that later amalgamate with the Pacific Greyhound?

The WITNESS. It did.

612 By Mr. BOWEN:

Q. I show you Respondent's Exhibit No. 24 for identification, and ask you what that is?

A. [Examining exhibit.] That is a Notice of Termination of Employment slip, filled out by me, and signed by Les Thomson.

Q. Is he the driver that testified here during the course of this proceeding?

A. He is.

Trial Examiner Wood. Could you tell from examining that document, the date on which it was made out?

The WITNESS. I could not. It simply reflects the date of termination.

Trial Examiner Wood. I see.

613 By Mr. BOWEN:

Q. That form upon which Exhibit 24 appeared is the form that is furnished by the State, and a company is required to file with them on the termination of employes?

A. [Examining exhibit.] Correct.

Mr. BOWEN. We offer Respondent's Exhibit No. 24 in evidence.

Mr. Shaw. No objection.

Trial Examiner Woon. Respondent's Exhibit 24 is received.

(The slip referred to was received in evidence and marked "Respondent's Exhibit No. 24, Witness Krug.")

Trial Examiner Woon. I note, Mr. Bowen, that the color of the two slips is different there. They are both documents required by the State regulatory body?

Mr. Bowen. They are triplicates. They are required to be made in triplicate. One is one color and one is the other.

Mr. Shaw. One goes to the employer, and the other to the employe, and one is for the State, Mr. Examiner.

By Mr. Bowen:

Q. Mr. Krug, it has been testified here that there occurred an accident where Mr. Sager had failed to report in connection with the vehicle that has been operated by Charles Eldridge. Could you tell when and how this accident was first brought to your attention?

A. On April 3, 1936, a driver came to my office and advised me that our schedule that morning, through the station of
614 Salinas, he was approached by the driver of the Blanco Dairy Company's truck. He stated that this driver questioned him as to the whereabouts of Driver Sager; and upon advising him that Mr. Sager was no longer in the employ of the Pacific Greyhound Lines, Mr. Eldridge told Mr. Baker that some long time back he had an accident, and to date the accident had not been settled for. (Tr. 614):

By Mr. Bowen:

Q. Mr. Krug, did Mr. Sager come under your jurisdiction as regards his employment?

A. He did.

Q. And do the drivers, generally, come under your jurisdiction?

A. Drivers operating on my division come directly under my jurisdiction.

Q. That is, on Division 4?

A. Correct.

Q. And your control of drivers is confined to Division 4?

A. Correct.

615 (Tr. 615):

By Mr. Bowen:

Q. Mr. Krug, have you gone through your record of drivers discharged to ascertain the number and names of drivers that were discharged for the same offense as Mr. Sager? That is, so-called rear-end collisions, during the past few years?

A. I have.

Q. What do you find in that respect?

A. I find that since 1930 my record reflects that there were 21 separate drivers who have had rear-end collisions, of which 13

were discharged and 8 were reprimanded, disciplined, or assessed demerits.

Q. The evidence shows that you are familiar with the circumstances surrounding the accident in which Mr. Sager had on this run at the time it ran to the race track. It was also charged, Mr. Krug, that it was because of Mr. Sager's membership in, and activities in, the Brotherhood of Locomotive Firemen and Enginemen, that is the reason for his discharge. Is that so?

A. That is not so.

Q. What were the circumstances as regards the reason for his discharge?

A. The circumstances were direct responsibility for the accident.

616 Q. And it was your authority to handle the discipline of Driver Sager?

A. It was.

Q. And you did so?

A. I did.

Q. It is also charged that Pacific Greyhound Lines has dominated and interfered and contributed to the support of an organization known as the "Pacific Greyhound Drivers' Association."

Can you testify as to whether or not that is a fact?

A. As far as my Division No. 4 is concerned, I can state it is not a fact.

Q. There is also testimony in the record that you fired Driver Thomson because of his membership and affiliation with, or activity in connection with the Brotherhood, or any union. Is that so?

A. It is not.

Q. What was the reason for the discharge of Driver Thomson?

A. Driver Thomson was not discharged; Driver Thomson resigned.

Q. And what were the circumstances?

A. The circumstances were this: June 1st, 1935, Driver Thomson bid in an assigned run, or an assignment on our run sheet, which consisted of a run between Santa Cruz, Watsonville Junction, and Davenport.

Driver Thomson held that run until some time in January 617 1936, at which time there was a guarantee position at Santa Cruz, and he bid in on the guarantee position.

To explain the guarantee position, I wish to state that it consists of a guarantee of $100 per month, whether the driver drove a mile, or whether he sat in the depot for the whole month. His duties for that position consisted of one round trip from Santa Cruz to Davenport, consisting of approximately 27 miles per day.

Q. How many hours?

A. They were split hours. He started out at 6:35 in the morning and arrived at Davenport at 7:50; was permitted, in operating terms, to D. H. P., or, "Dead Head Passenger" on the next schedule, leaving there in ten minutes back to Santa Cruz; remain in Santa Cruz until 3:50 in the afternoon; "D. H. P." to Davenport, and operate his bus back that evening, arriving back in Santa Cruz at 4:50.

In addition to this one run to Davenport, Driver Thomson was instructed to properly familiarize himself with all runs operating out of Santa Cruz depot.

At the time he took the assignment, as I stated, some time in January, Driver Thomson stated that with his little experience in driving a bus he didn't feel quite safe in operating his bus between Santa Cruz and San Francisco.

I told Driver Thomson at that time that if he desired the assignment, or the $100-guarantee job, at that time, he could
618 take it; but by the time the summer rush started it would be absolutely necessary for him to break in between Santa Cruz and San Francisco, and feel reasonably safe and sure in operating that run.

Nothing further was said until the Summer rush started out, at which time I wrote the agent at Santa Cruz, directing him to instruct Driver Thomson to break in on the run. Driver Thomson refused.

One week later, I made a trip to Santa Cruz over the line. I asked Driver Thomson to sit in the bus with me and discuss the reasons why he refused the agent to break in on the run.

He told me his reasons were still the same as what he told me in January.

I told him it would be necessary, then, for me to replace him with another man on the Extra Board at San Francisco, and that he could have the opportunity of taking the Extra Board job in San Francisco.

He told me that before he did that, he would quit.

I said, "Well, Les, that is your privilege." I says, "If you want to quit, I will have to put another man on this run to protect these runs out of Santa Cruz."

"All right," he says, "Then, consider that I have quit."

* * * * * * *

621 Q. Now, you went out with Mr. Hensley to investigate the accident that Saturday night, didn't you?

A. I did.

Q. Did you find any difficulty in finding skid marks?

A. No, I did not, Mr. Shaw.

Q. You found them very easily?

A. I found them at the point that the accident was reported to have happened to me.

Q. Who reported the accident to you in the first instance?

A. My Chief Clerk.

Q. And, I take it that Mr. Sager had reported it to him?

A. I believe so.

622 (Tr. 622-626:)

CROSS EXAMINATION

(Tr. 622-626:)

622 CROSS EXAMINATION

Q. Now, Mr. Hensley tells me that on Monday, two days after the accident, the insurance department had already made up its mind as to the responsibility. Had you?

A. No, sir.

Q. Yes, it was on that day—that afternoon—that you settled the case with Mr. Harnish, wasn't it?

A. I don't know.

Q. Well, the records show, I believe, that on the 9th day of March, the case was settled?

A. Yes; but I didn't settle the case before, Mr. Shaw.

Q. At the time, you hadn't made up your mind whether Mr. Sager was guilty of negligence, or not?

A. At that time my mind was made up. My investigation, as far as the accident report was concerned, was completed; but, in all fairness to Mr. Sager, I wanted to get the complete record and the result from the insurance department.

Q. But your mind was already made up?

A. At that time, Monday.

Q. Now, what had made up your mind? What investigations had gone into the concrete belief in your mind that Mr. Sager was

623 guilty of negligence?

A. The accident report as presented to me by Mr. Sager.

Q. Anything else?

A. The scene of the accident, thorough investigation, and pictures taken by me of the location.

Q. What do you mean by "thorough investigation and pictures"? What was the rest of your investigation?

A. The rest of my investigation consisted of going on to the scene of the accident, or where the accident took place, the following Sunday morning at approximately 10 o'clock, and surveying the whole ground, taking pictures; then, going to the shop and taking pictures of the bus itself.

Q. You hadn't talked to any of the witnesses?

A. I had not.

Q. And on the basis of that, you were willing to say that Mr. Sager was not partially responsible, but fully responsible. Is that correct?

A. Correct.

Q. It would have been unreasonable on the facts that you knew at that time to surmise that he was even partially not responsible. Is that what you mean?

A. After carefully studying the report.

Q. After carefully studying Mr. Sager's own report?

A. Correct.

Q. Now, what particular elements, in that report, led you to

624 that belief? I am handing you Mr. Sagers' report, which is Respondent's Exhibit No. 2.

(Tr. 624–625:)

A. (Examining exhibit.) Question 37 of the Accident Report reads: "How far was the bus from point of accident when Driver's attention was first called to danger of accident?

Answer, "75 feet."

"At that time what was speed of bus?"

"40 m. p. h."

"Condition of brakes?"

"Good."

Question 39: "How close to point of accident when brakes were applied?"

"50–75 feet."

Q. And that, on its face, is a case of total responsibility in your mind?

A. Yes.

Q. Did you read the rest of the accident report?

A. I did.

Q. Did you recall there that Mr. Sager stated that the car was crossing in front of him, and he was going to make it all right, according to the driver, but right in the middle of his turn he stopped dead? Did you read that?

A. I did.

Q. Wouldn't that justify Mr. Sager's own statement, and remove him from partial responsibility?

625 A. Not entirely, it would not.

Q. Have you ever driven a car?

A. I have.

Q. Isn't it a fact that probably 75 per cent of your driving experience has taught you that in a great many cases you have to depend on the conduct of the person who is in front of you?

A. May I have the question, please?

Mr. SHAW: Will you read it, please?

(The question referred to was read by the reporter as above recorded.

The WITNESS. That is correct.

By Mr. SHAW:

Q. Therefore, Mr. Krug, if you were driving an automobile in a careful, cautious manner, and a man in front of you—75 feet in front of you—appeared to be turning to the left, and seemed to be making it all right, and you had 75 feet, wouldn't you assume that he would go on and cross instead of stopping right there?

A. I might assume it, but I wouldn't say it was safe operation or safe driving, to come on to him until he made up his mind as to what he did.

Q. Now, Mr. Sager's report showed, didn't it, that at the period just before—I mean, at the instant just before contact, his car had been slowed down from 40 miles an hour to about 15 miles an hour?

You saw that in the report, didn't you? Wasn't that the rea-

626 sonably cautious thing to do in such a circumstance?

(Tr. 626):

A. It was reasonable, the only thing that could be done.

Q. So, you don't blame the driver for slowing down, then?

A. No, sir.

Q. Now, wherein lies your believe that, stated on the facts as you gave them here, Mr. Sager couldn't have been anything else but negligent and fully responsible for the whole accident?

A. The report.

Q. What report?

A. The accident report.

Q. Mr. Sager's own accident report?

A. Correct.

Q. That sets forth that the man himself stopped before he finished that turn, doesn't it?

A. In one phase of it, it does, and in another phase it sets forth that the driver was operating his bus in anything but a careful manner.

627 (Tr. 627–628):

By Mr. SHAW:

Q. Nothing else in the report that shows he was operating in a careless manner except the questions that you have given us?

Trial Examiner WOOD. And that was the sole basis for his discharge?

The WITNESS. That, in connection with the investigation at the scene of the accident, where the accident took place.

By Mr. SHAW:

Q. Now, the statements of the witnesses, the police records, none of the other statements of the driver had anything to do with making up your mind as to the fact that Sager was fully responsible?

A. They did, after my report was decided upon.

Q. After you had made up your mind?

A. After I had decided on the report itself.

Q. The report reads, doesn't it, Mr. Krug, that the driver of the bus was in the middle lane, and that Mr. Harnish was in the outside lane, and tried to make a left turn?

A. Correct.

Q. That is what the report says?

A. Correct.

Q. Now, in view of that—accepting those facts to be true, would you say the driver was still negligent?

A. In view of that, and subsequent information received on statements, plus the investigation at the scene of the accident,

628 I would still say that the driver was at fault, directly responsible.

Q. But, of course, that had nothing to do with your making up your mind because you had already made it up before you got those subsequent statements?

A. Made it up on Monday.

Q. On Monday, before you got the subsequent statements?

A. Yes; but after I made my investigation at the scene of the accident.

Q. Yes; I understand.

You have stated that a part of a driver's experience—safety experience—is in trusting that the driver in front of him will behave in a reasonably careful manner, when he starts out to do something, finish it.

Now, wouldn't you say that Mr. Sager was reasonable in assuming that this man, when he started on his left turn, would continue and finish it, rather than stop right in the middle of it?

A. No; I would not.

Q. You would not?

A. No, sir.

Q. What would you have a driver do every time he sees a man making a left turn?

A. I would expect him to have his bus under such control that, if a man decided to stop, he could stop, also.

629 (Tr. 629):

Q. Well now, is a bus under perfect control when it is going 15 miles per hour?

A. It is to a certain degree.

Q. Speaking generally, it is under good control?

A. A lot better than 40.

Q. Well now, Mr. Sager said that at the time this thing happened he was going 15 miles per hour. That was on the report, wasn't it?

A. [Pause.]

Q. Do you remember?

A. No, I don't. I thought he was going 40.

Q. Let's look at the report, and see if he says that. I will read it to you.

Question 50: What was speed of bus at time of collision?

The answer is: 15 m. p. h.

A. That is correct.

Q. Well now, if he had his bus at 15 miles per hour, didn't he have his bus in a position to prevent accidents?

A. No, sir.

Q. Didn't he?

A. No, sir.

Q. Then 15 miles per hour is not a reasonable speed to drive in order to prevent an accident, is that correct?

A. Not at the accident; no, sir.

630 (Tr. 630):

By Mr. SHAW:

Q. Well now, Mr. Krug, you have got here on the Notice of Termination of Employment "Responsibility of Accident (Speeding)."

Would you say that you got that from the basis of his report, or subsequent testimony? I am referring to the speeding part of that.

A. On the basis of his report, Mr. Shaw.

Q. The basis of his report?

A. Yes, sir.

Q. Now, the report says he was going 40, and then cut down to 15. Is that speeding?

A. That is speeding under the conditions that that bus was being operated at that time.

Q. Now, as I understand, all these cars were coming back from a race track, weren't they?

A. Yes, sir.

Q. A good deal of traffic? Three lanes full, isn't that correct?

A. Correct.

Q. Now, Mr. Sager wasn't leading the parade back from the race track, was he?

A. Probably not.

636 (Tr. 636–637):

By Mr. SHAW:

Q. If a man had been on a run beginning at 2:30 in the morning, and arriving in that morning at 10:00 o'clock, would it be within the authority of the dispatcher to send that man out on another run that evening?

A. It would, if he found out that it was a case of emergency.

Q. And even though he was convinced that the man was in bad enough physical shape where it might be a risk?

A. If the dispatcher was convinced of that, he wouldn't have sent him out.

Q. Well, Mr. Sager has testified that he told the dispatcher that he didn't want to go, that he hadn't had any sleep, and that he hadn't come down there for the purpose of driving, but merely to get his check.

Now, the dispatcher had those facts in his mind. On the basis of that, would you say the dispatcher acted properly in asking him to take that run?

A. The dispatcher asked him properly to take it for the rea-

637 sons that it was an emergency case, because of 300 people waiting to be transported to San Francisco.

Q. In other words, it is your policy, is it not, that where you have an emergency, the fatigue of the driver is unimportant.

A. It is very important. The dispatcher's discretion is used.

Q. Well now, if Mr. Sager had refused to go on that run what would have happened to him?

A. Nothing would have happened to him.

Q. Well, you knew he didn't want to take the run, didn't you?

A. I found it out later, that he told the dispatcher that his wife was waiting in the car for him, and that he had made previous arrangements.

Q. That is all the dispatcher told you? That is all the dispatcher told you that he told him?

A. Correct.

638 (Tr. 638):

Q. Did Mr. Travis speak to you about Mr. Sager's case?

A. I spoke to Mr. Travis.

Q. You ordinarily take up the case of a discharged employee with Mr. Travis?

A. Not ordinarily; certain cases.

Q. Why did you take up Mr. Sager's case with Mr. Travis, particularly?

A. Because I was aware of the various conferences that Mr. Sager had had with Mr. Travis, and I wanted to keep him completely informed.

Q. Various conferences, you mean, about the Brotherhood?

A. Correct.

639 (Tr. 639-640):

Q. Did you talk to Mr. Hensley about Sager's case?

A. I did.

Q. What was your conversation with him?

A. I questioned Mr. Hensley as to whether or not his investigation report was completed and submitted. He told me it was not.

Q. When was this?

A. That was on Monday afternoon, following the accident.

Q. He told you his investigation report was not complete on Monday afternoon?

A. Correct.

Q. Well, it so happens that on Monday, right after Monday noon, he sent a man out to settle the case, didn't he?

A. According to what I heard in the courtroom here, he did.

Q. Is it your idea of the policy of the company that they settle the case before their investigation is complete?

A. I don't know that policy.

Q. You don't?

A. No, sir.

640 Q. Now, at the time you asked Mr. Hensley whether his investigation report was complete, you had already made up your mind as to the full responsibility, hadn't you?

A. On the report and my investigation, yes.

646 J. H. Hodge, called as a witness for the Respondent, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

(Tr. 646):

Q. And are you employed by the Respondent company, Pacific Greyhound Lines?

A. I am.

Q. In what capacity?

A. Assistant General Manager.

Q. And how long have you been employed in that capacity?

A. Since 1930.

Q. And does your jurisdiction extend over some special division?

A. Division 3.

647 (Tr. 647):

Q. Were you the official who had jurisdiction over the operation of Mr. Camy, the driver who testified?

A. Yes.

Q. It has been charged that Mr. Camy was discharged because of his belonging to the Brotherhood, and because of his activities in connection with the organization work. Is that true, Mr. Hodge?

A. I knew that at one time Driver Camy signed an application with the Brotherhood, but I did not know at the time I discharged Driver Camy that he belonged to the Brotherhood.

Q. That doesn't quite answer the question.

Will you read the question?

(The pending question was read by the Reporter, as above recorded.)

The WITNESS. No.

Q. Have you, as an official of the company, ever endeavored to intimidate, coerce, or interfere with the employes in connection with their activities in belonging to labor organizations?

A. No.

648 Q. Have you ever interfered or endeavored to interfere, or dominate the organization known as the Pacific Greyhound Drivers' Association?

A. No.

Q. Were you the official that discharged Driver Camy?

A. Yes.

Q. Will you please go ahead and state the circumstances, how it came about, and why you discharged him?

A. On or about March the 1st, 1936, I received a letter at my office from our agent in Fresno, dated March 10, stating that Driver Camy had lost some express at Plaza.

The agent had discussed this with Driver Camy, and Driver Camy admitted that he was at fault and would pay for the shipment. A couple of days after that, or immediately after that, I met Driver Camy on the sidewalk at the entrance of our depot at Fifth and Los Angeles Streets.

I advised Driver Camy that I had received this word from Fresno, and asked him if this was correct. He told me it was.

I asked him if it was his desire to pay for the shipment, and he told me it was. I then advised him that I would give my sec-

649 retary orders to make a deduction order for him to sign in the amount of the express lost.

Q. Was the first instance that has been testified to here about the loss of a package by Driver Camy?

A. Yes.

Q. And was there a subsequent incident that arose immediately preceding his discharge?

A. Yes.

Q. Will you go ahead and state the circumstances relative to that?

A. On or about May 2, I received a letter from our agent in Bakersfield enclosing a "V. P. L." letter, stating that this had been picked up at Greenfield Corners.

I requested my secretary to investigate the records and find out what schedule this left Los Angeles on. The information that was given to me was that this "V. P. L." was sent out on Driver Camy's schedule.

On May the 4th, I waited at the Los Angeles terminal, Fifth and Los Angeles Streets, until Driver Camy came up from the garage to pull his schedule. I walked out to his car and requested him to open the door and let me in. He opened the door. He was still sitting in the Driver's seat, and I got in, and I says, "Camy, what is the matter with you? You don't seem to be doing your work."

He says, "What do you mean?"

I says, "You lost some express at Plaza a short time ago,
650 and now you have lost a 'V. P. L.' Do you know anything about it?"

His answer was No.

I says, "You don't seem to have the interest of the company at heart, and you are not performing your driving duties as I think you should, and there is a question in my mind as to whether I will allow you to remain in the service or not."

His answer was, "You are the boss; go ahead and fire me."

I then explained to Driver Camy that the Pacific Greyhound Lines advertises first-class service; that it was up to us to try and fulfill what was advertised; also, that there was another line trying to get in and parallel our lines, and that I felt that it was up to each one of us to perform our duties 100 per cent, if possible, and, in my opinion, he was not so doing.

He then again said, "You are the boss; go ahead and fire me."

I told Camy, I said, "Well, I am not going to fire you now. However, I am not going to let you go out on your run tonight. You can take your things out of the car, and I will place another driver on your car and you can report back to me the day after tomorrow for decision."

Q. In his statements to you at that time, Mr. Hodge, did you consider his attitude was insolent and insubordinate?

A. I did.

651 Q. Then, what happened next?

A. Driver Camy reported back to me on the morning of the 6th.

I told him that I had given this a great deal of thought, and that I was taking him out of service.

Q. Was there any conversation at that time on his part?

A. He said, "Okay".

I said, "Bear in mind, Camy, there is nothing personal about this. It is simply from the company's standpoint."

Q. At that time, had you known that Camy was a member of the Brotherhood, or engaged in any activity in connection with it?

A. I did not.

Q. Did you know that he was a member of the Employes' Drivers' Association?

A. Yes.

652 (Tr. 652–654):

Cross-examination by Mr. SHAW:

Q. Now, Mr. Hodge, you stated that at the time you talked to Mr. Camy he was insubordinate and insolent. At the time he was discharged, that wasn't charged against him, was it?

A. The charge that showed on his record was "Failure to properly perform his driving duties", I believe.

653 Q. Does that include insolence and insubordination?

A. No, it doesn't mean that.

Q. So, that isn't a part of the reason why he was discharged then, was it?

A. The reason why he was discharged was mostly on account of insubordination.

* * * * * * *

Q. Yes, and so the real reason why he was discharged was not because of his failure to properly perform his driving duties, but because he was insolent and insubordinate.

A. For both reasons.

Q. Can you say how much was one reason, and how much another reason?

A. Why, I feel it was on an equal basis. He wasn't properly performing his driving duties, and he was insubordinate.

Q. Let me ask you this question, and perhaps we can clear it up: If he wasn't insubordinate, and if he wasn't insolent, would

654 you have discharged him because of his failure to deliver that letter properly?

A. [Pause.] No; I don't think I would have.

656 (Tr. 656):

Q. Had he ever been insolent or insubordinate with you before that time?

A. No.

Q. As a matter of fact, he is a very quiet chap.

A. Yes.

Q. A very peaceful chap.

A. Yes.

657 Q. Did you discuss Mr. Camy's case with anybody during the two days that elapsed between the time you spoke to him and the time you informed him he was discharged?

A. I did not.

Q. The decision was totally yours?

A. Yes, sir.

Q. You didn't discuss it with any of the other drivers?

A. No, sir.

Q. Did you know at this time that there was a drive being made for Brotherhood organization?

A. Not particularly. I knew that Driver Macy, who had been there a long time, was around among the men; but I never gave it a good deal of thought.

658 (Tr. 658-659):

Q. Are you acquainted with the labor policy of the Pacific Greyhound Line?

A. The association, you mean?

Q. No; the labor policy of the company, what is its attitude toward its employes?

A. Yes.

Q. Do you know whether the policy of the company today and during 1936 here is precisely the same as it was during 1934?

A. I think so.

Q. They have the same attitude toward labor organizations, haven't they?

A. I think so.

659 Q. The same participation, whatever it is, in the Drivers' Association?

A. Yes.

Redirect examination by Mr. BOWEN:

Q. Was this statement to you by Mr. Camy, "Go ahead and fire me," other than a manner that implied that he was daring or challenging you to fire him?

A. I didn't take it as a challenge.

Q. Well, what was there about it that you felt was insolent?

A. The attitude that "You are the boss, go ahead and fire me," as much as to say, in my mind, that he didn't care.

Q. Well, was it entirely the words he uttered, or the manner?

A. The manner also.

(Tr. 659-660):

Examination by Trial Examiner WOOD:

Q. Have you complete efficiency records and case history on all the drivers of your division at your office?

A. In San Francisco, not at my office.

Q. Well, during the interval that elapsed between Camy's layoff and his discharge, did you come to San Francisco to consult the records?

A. No.

660 Q. What records did you have before you in Los Angeles which you took into consideration in arriving at your decision to discharge Camy?

A. Just my memory of the years that I had worked with him. I didn't have any record.

Q. How many years have you worked with him?

A. I have known Camy since 1925.

Q. Have you worked with him since that time?

A. He worked for me.

Q. For you?

A. Since 1925.

Q. Have you ever found him insolent before?

A. No, sir.

663 E. A. RAYMOND, called as a witness for the Respondent, having been first duly sworn, testified as follows: (Tr. 663–664):

DIRECT EXAMINATION

Q. And are you employed by the Respondent company, Pacific Greyhound Lines?

A. I am.

Q. Are you also an official of the Drivers' Association?

A. Not at this time.

Q. Were you?

A. Yes, sir.

Q. State when, and in what capacity.

664 A. When the Association was formed I was elected Chairman of Committee of Drivers, the representatives.

Q. Is that the top official in the Drivers' organization?

A. Yes, sir.

Q. And how long did you occupy that position?

A. Up to December the 31st, 1934.

665 Q. It is charged that the Respondent company has dominated and interfered with the organization known as Pacific Greyhound Drivers' Association. Will you state whether or not that is a fact?

A. Not to my knowledge.

Q. And what is the policy relative to soliciting membership among these new drivers?

666 A. When I was representative, when a new driver would come into the service I would get in contact with him and ask him if he wanted to join the organization, or what he wanted to do. I told him it is up to him to join any organization he seen fit.

Q. Did you consider that there was anything in belonging to the Drivers' Association that prohibited a man from belonging to the Brotherhood or any other organization?

A. No, sir.

667 Was there anything in the attitude of the officials of the company, Mr. Raymond, which indicated a desire to dominate this Drivers' Association or interfere with its functioning?

668 A. At no time.

669 (Tr. 669-670):

Cross Examination by Mr. SHAW:

Q. You knew Mr. Camy down there at Los Angeles, didn't you?

A. Yes, sir.

Q. Did you know he was active in the Brotherhood?

A. I did not.

Q. You did not?

A. No. He gave me an application in the Brotherhood, but I didn't know that he belonged to the Brotherhood.

Q. Well, you knew he was soliciting, then.

A. I did not; only when he gave it to me.

Q. A fellow wouldn't be handing out these applications if he weren't soliciting members, would he?

A. Well, that is, outside of myself I don't know whether he talked to anyone.

Q. Did he try to solicit you as a member?

670 A. He gave me an application. He came in one morning and said, "Here is an application," and I think he said, "If you want to, fill it out, or if you don't, okay." That is about all there was to it.

Q. He didn't coerce you in any way?

A. He did not.

671 (Tr. 671-672):

Q. You have said that when a new driver came in, that you would contact him and ask him whether he wanted to join the Drivers' Association.

672 A. Yes, sir.

Q. What time of day would you do that? During your working hours, or at night, or your days off, or when?

A. Whenever I would see him.

Q. That would be when he came into the terminal, or any other such time?

A. Yes, sir.

Q. Did any officer of the company ever tell you you weren't allowed to solicit membership?

A. No, sir.

Q. You understood it was all right, didn't you?

A. Yes, sir.

Trial Examiner WOOD. And all right on company time, also? Is that what you mean to say?

The WITNESS. Why, yes. In our working agreement, it says that the representatives shall be permitted to have time off for any representative work.

By Mr. SHAW:

Q. Now, you said that you got a few boys back to work down there through the Association. Who were those boys?

A. Lew Harris and Chapman.

Q. Chapman?
A. Yes, sir.
Q. Both boys had pretty serious accidents, didn't they?
A. No, sir.
673 (Tr. 673):
Q. Neither one of them was very serious, is that correct?
A. No accidents.
Q. What were they discharged for?
A. One of them was discharged for speeding and being arrested by a State Officer, and the other, for drinking.
Q. Does the Drivers' Association make it a practice to get men back to work who were drinking?
A. If, after a man has proved that he has quit drinking, we do.
Q. And drinking is a pretty serious violation of company rules, isn't it?
A. It is.
Q. Did you get these men back to work with their full seniority rights restored, or were they re-hired without seniority rights?
A. One of them with full seniority rights; and the other one, as a new man.
Q. Was the fellow who went back for drinking—did he get his full seniority rights back?
A. He did not.
Q. He did not, but he got his job back?
A. Yes, sir.
675 Q. Hasn't Mr. Travis ever turned you down?
A. No, sir.
Q. Never turned you down?
A. No, sir.
Q. Did you ever refuse, as representative, to take anything to Mr. Travis?
A. I did not.
Q. You took up every grievance that the men had?
A. Yes, sir.
Q. Do you know how many grievances you handled over the period of your representation?
A. I do not.
Q. There was never a single grievance that you ever had any argument over, in other words? Is that it?
A. Oh, yes.
Q. What is your answer?
A. Yes.
Q. You did have some argument?
A. Yes, sir.
Q. But in the end, you always won out?
A. I did.
Trial Examiner Wood. We will take a brief recess.
(Whereupon a short recess was taken, after which proceedings were resumed, as follows:)

676 Trial Examiner Wood. The hearing is please called to order. Proceed, counsel.

By Mr. Shaw:

Q. Have you ever been a member of a labor organization prior to the time of your joining the Brotherhood in 1933?

A. Yes, sir.

Q. What labor organization is that?

A. Chauffeurs' and Teamsters' Union.

Q. As such, were you ever engaged in any collective bargaining conferences with your employers?

A. Yes, sir.

Q. As a representative, or something like that?

A. I was elected as one of a committee of three to talk to the president and general manager of the company I was working for.

Q. In your capacity as member of the grievance committee—I suppose it was a grievance committee, wasn't it?

A. Yes.

Q. (Continuing.) In the Chauffeurs' and Teamsters' did you learn the principles of the technique of collective bargaining over any period of time?

A. No, sir.

Q. How many times did you act on such a grievance committee?

A. Once.

677 Q. Just once?

A. Yes.

Q. Well, do you recall from that one experience of yours, whether your experience in that case was similar to your meetings with Mr. Travis as a representative in the Drivers' Association?

A. I remember the case very plainly.

Q. Well, was it a similar experience for you?

A. No.

Q. Wherein was it different?

A. Because the boys went out on a strike.

Q. You didn't get what you wanted when you were with the Chauffeurs'?

A. No, sir.

Q. You find that in dealing with Mr. Travis you are able to express your grievances freely?

A. Yes, sir.

Q. What Mr. Travis wants more than anything else, isn't it, is your explanation of what the boys are aggrieved at?

A. Yes.

Q. And as an employer, he isn't as close to the men as you are, is he?

A. I believe that is right.

Q. And he can learn from you how the men feel about certain working conditions, can't he?

678 A. Yes.

Q. So, it is true, isn't it, that the relationship between the Drivers' Association and the President of the company in these conferences, is noe of a consulting nature? That is, he consults you as to what your grievances are?

A. He doesn't ask us until we tell him.

Q. You tell him?

A. With me, it was that way.

Q. Did you ever ask Mr. Travis for any settlement of grievances which you think Mr. Travis wouldn't grant?

A. I didn't quite understand that.

Q. Did you ever ask Mr. Travis for anything you think you wouldn't get?

A. [Pause.] Well, I couldn't say.

Q. Well, it is true, isn't it, that there are a number of, more or less, forbidden subjects you don't bring up?

A. No, sir.

Q. You have learned over a period of years in dealing with Mr. Travis that there are certain things that are easier to get than others, haven't you?

A. Well, Mr. Travis—there are certain things he won't grant, I suppose.

Q. You know what they are, don't you?

A. One is a uniform—in regards to uniforms.

Q. What was that?

679 A. Well, we wanted to do away with the Sam Brown belts and coats, and he wouldn't agree to that.

Q. What did you do about it?

A. Well, we are still wearing them.

Q. Did you ever ask for a general raise in pay throughout the system for the men?

A. Yes, sir.

Q. Did you get it?

A. Yes, sir.

Q. What was the date of the granting of a general raise in pay, do you recall?

A. No, sir; I couldn't say.

Trial Examiner Wood. Approximately?

By Mr. Shaw:

Q. Just approximately.

A. There was at two different times, but I couldn't [pause] I believe, in September the 8th meeting, 1934, I believe one of them. I think we got a raise, that is, of a mill or so. I just forgot what it was.

Trial Examiner Wood. A mill or so?

The Witness. I won't say.

By Mr. Shaw:

Q. A mill or so per mile, that is?

A. Yes, sir.

Q. Well, that was the time of the discussion over the Perryman and Seeman case, wasn't it? Do you remember that?

680 A. I remember the discussion, but as to the dates, I do not.

Q. At what other time did you get a raise in pay, a general raise in pay?

A. Before that there was an addition to our pay, that is, as to the mileage; but I couldn't tell you just when.

Q. Can I refresh your memory by saying that at the very beginning of the Drivers' Association there was a raise in pay granted?

A. There was the bonus system that was in effect. It was done away with, and there was [pause] yes, there was an addition to our mileage.

Q. That was at the time the Brotherhood was very active, wasn't it?

A. Yes; I believe it was.

Q. Have you found that you are able to get your requests more easily at the time when the Brotherhood is active, or when another labor organization is active?

A. No, sir; I have never thought of that.

Q. Now, you are not now a representative?

A. No, sir.

Q. Well, when was Mr. Hahn elected to take your place?

A. Effective January 1, 1935. I may be mistaken, but that is, to my knowledge.

Q. Well, was it 1935 or 1936? That is all I am interested in.

A. Yes, sir; I believe [pause] I know he was repre-

681 sentative in 1935, and in 1936; yes, sir.

Q. You are not now the representative there?

A. No, sir.

Q. Just a driver?

A. That is all.

Q. You still get in touch with the new men to join?

A. No, sir.

Q. You haven't done that since you have been representative?

A. No, sir.

Q. Is that right?

A. No, sir.

Mr. SHAW. I think that is all.

Mr. BOWEN. No more questions.

Mr. SHAW. Do you have any more, Mr. Examiner?

Examination by Trial Examiner WOOD:

Q. Now, when this Drivers' Association—the company union—was formed, you stated that you were elected Chairman. Do you recall how the people who elected you Chairman were themselves elected?

A. By a vote of the drivers in their respective divisions.

Q. Do you recall that there were meetings at that time of all the drivers, as a result of which there was a representative elected on their division?

A. No; it was by ballot?
Q. By a ballot?

682 *Examination by Trial Examiner Wood*

(Tr. 682–683):

Q. When did you first know that there might be an association of drivers?

A. When I came up here to San Francisco with the other boys from the south there, and there was seven of us met here.

Q. Were you called in?

A. Yes, sir.

Q. By whom?

A. Oh, I couldn't state whether it was Mr. Travis or Jones, or who it was.

Q. What took place after you met with Mr. Travis then?

A. He told us, or, we met down here at the office, and he says, "Boys, you can do as you please. It is your privilege to form any organization that you wish, or join any organization that you wish; but, I believe, for your benefit, that if you have an organization of your own that you can do better, and that it will help you out more than going in some outside organization that don't know anything about the bus business."

After we talked it over, we come to that conclusion.

Q. Well, merely that statement didn't convince everybody, necessarily. What else was said?

A. I couldn't say. It was talked among the representatives. We talked it over among ourselves.

683 Q. Well, what did Mr. Travis suggest? Did he suggest you go outside and talk it over among yourselves?

A. Oh, yes. We talked it over among ourselves afterwards. We didn't talk about anything in front of Mr. Travis.

Q. Then, did you go back after talking it over among yourselves, to see Mr. Travis again?

A. Yes.

Q. The same day?

A. The next day, I believe it was; I am not positive on that.

Q. Was this group that came up with you one group, and were there other groups among other divisions?

A. No, sir. I was the only one from the third division. There was a man from Number 1 and Number 2.

Q. Do you know how you happened to be picked?

A. I was—I started down there [pause] I tried to start in the Trainmen in Los Angeles, and I talked to some of the boys, and there was another fellow also, I believe; and the two of us was nominated to represent the third division, and I believe I won out. In fact, I am sure I won out on the vote of the ballots.

Q. Then, it was after this voting of the balloting that you were called to San Francisco by Mr. Travis?

A. Yes.

Q. Do you know where the instructions came as to holding that ballot?

684 (Tr. 684–685):

A. I do not.

Q. Well, when did you first learn of it?

A. In Los Angeles, the day before the election.

Q. Well, did it come to you through the meeting of Hodges, or someone else, or how did it come?

A. I couldn't say.

Q. Do you recall the meeting? Do you recall how the ballots were counted, and by whom?

A. No, sir.

Q. Did one of the drivers handle the ballots?

A. I couldn't tell you, sir.

Q. Who informed you that you had been elected?

A. I believe—whether it was posted on the bulletin board or whether I was told, I couldn't swear.

Q. Do you recall who might have told you?

A. No, sir. At that time I was on the Extra Board, and I don't believe that I was in Los Angeles when the votes were counted. It seems to me like I was out of town, but I am not positive.

Q. Now, as a result of this discussion with Travis, at which he suggested that it would be better for you to form your own union, what did you do then?

A. We talked it over.

Q. You say "we." You mean the group that were there present?

A. Yes; these seven of us; and we decided that if we could

685 get some help, why, we would do that.

Q. What do you mean "help"?

A. Well, there was none of us capable of drawing up a working agreement, or a constitution and by-laws.

Q. What did you do about that problem?

A. I asked Mr. Travis if Mr. Judge Lucas would help us, and if the company would furnish a stenographer, and if Mr. Jones could help us; and he told us that anyone that we wanted was at our service.

Q. Then, what did you do?

A. We went ahead then, and with Judge Lucas' assistance drawed up this working agreement.

Q. Did Judge Lucas have his office in the same office building in which you conferred?

A. I believe he did. I don't know if it was in Judge Lucas' office, but I believe it was in that building, I believe it was in that building, I am not positive.

Q. Then, you went and saw Judge Lucas?

A. No, sir; Judge Lucas came into the room where we were at.

Q. That was in Mr. Travis' room?

A. No, sir; that was a separate room. They called it the board room.

Q. What did he have to say?

A. He told us that—he says, "Mr. Travis told me, sent me in here to help you boys out," and I remember one part of it.

686 He said, "I don't speak your language in regards to driving, but I will do anything you boys say," and he called his secretary, Harry Parker, in to take notes and do the paper work. (Tr. 686–687:)

Q. Then, what happened?

A. Well, we drawed up the working agreement.

Q. Right there at that first meeting?

A. Yes, sir; a couple of days at it, if I remember right.

Q. There was no draft submitted to any of the representatives until after this discussion with Judge Lucas had taken place; is that right?

A. No, sir; to the best of my knowledge I think we drawed it up right there.

Q. Were there any paragraphs put in that draft that hadn't been proposed by the drivers themselves?

A. Not that I know of. Later on, there were some amendments made to it by the representatives.

Q. But the draft—that is, the draft of the by-laws, as finally adopted by your organization—drew out of this Judge Lucas meeting only; is that right?

A. To the best of my knowledge; yes, sir.

Q. Did you know what you wanted in those by-laws?

A. Not sure.

Q. Well, who was the person among you who had the most familiarity with what ought to go into the by-laws?

A. (Pause.)

687 Q. In other words, who really put the meat in the by-laws? Do you recall?

A. Amos Meininger done quite a little of the talking, if I remember right; also, Clarence Calhoun, I believe; and we all had a finger in it, but then, I believe, Amos Meininger had more experience in anything like that than any of the rest of us.

Q. Do you recall who first proposed the language to go into the first draft?

A. No, sir.

Q. Was it Judge Lucas?

A. I wouldn't say.

Q. But, as finally adopted, it was what you all had been discussing among yourselves, and nothing else?

A. Yes, sir.

Q. You hadn't seen any other by-laws? It just came right out of your own meeting, is that right?

A. I believe that (pause) I think that we did have some books in there, but I couldn't swear to it either way.

Q. Your expenses were paid while you were here by the company?

A. Yes, sir.

689 (Tr. 689–690):

Q. What part did you have in the writing of this agreement, this drivers' agreement?

A. What part did I have?

Q. Yes.

A. Well, I sat in, and the seven of us discussed each article in there.

Q. Well, who submitted the original draft, do you remember?

A. All of us together.

Q. You all submitted the draft? That is, the working agreement?

A. Yes. Judge Lucas would ask us what we wanted, and we would tell him, and argue it out among ourselves, and his secretary would take it down.

Trial Examiner Wood. Let me see Exhibit 39.

(The exhibit referred to was passed to the Trial Examiner.)

Trial Examiner Wood. Also Respondent's Exhibit 15.

(The exhibit referred to was passed to the Trial Examiner.)

Q. I show you Respondent's Exhibit 15, and call your attention to page 10 and the heading, "Notice of Change of the Above Rules and Regulations," and ask you to read the three paragraphs there set out, and give me, to the best of your recollection, the discussion that centered around the adoption of those particular paragraphs.

A. (Reading exhibit.) Now, what was the question, please?

Trial Examiner Wood. Will you read the question, please?

690 (The pending question was read by the Reporter, as above recorded.)

The Witness. I believe Mr. Travis in this particular Notice of Change in Above Rules and Regulations—I believe that he was asked to help us out, but I am not positive.

By Trial Examiner Wood:

Q. Travis sat in on some of these meetings in reference to the agreement?

A. We would ask him sometimes, in order to [pause] I think we asked him once or twice. I don't remember exactly, but I don't know how many times.

Q. And you think these paragraphs grew out of a meeting in which he was called in?

A. One of them wasn't in here at all at the original meeting. This paragraph here [indicating] was added later on.

Trial Examiner Wood. The witness refers to the second paragraph.

691 A. F. Martin, called as a witness for the Respondent, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

(Tr. 691–692):

Q. And are you employed by the Respondent, Pacific Greyhound Lines?

A. I am.

Q. In what capacity?
A. Driver.
Q. How long have you been employed in that capacity?
A. Fourteen years.

Q. Are you an official of Pacific Greyhound Drivers' Association?

692 A. A representative.
Q. How long have you acted in that capacity?
A. Since '33.
Q. And is that a representative from any particular division?
A. Division 4.
Q. The Respondent Pacific Greyhound Lines is charged in the complaint here with interfering and dominating this Pacific Greyhound Drivers' Association. From your experience as a representative would you say that that is so?
A. No, sir.
Q. Have the officials of the company endeavored to interfere in any manner with the operation of your Drivers' Association?
A. No, sir.
Q. Have the officials of the company in any way attempted to interfere with, restrain, or coerce you into joining any labor organization, or restraining you from joining any labor organization?
A. No, sir.

696 (Tr. 696-697):

CROSS EXAMINATION

* * * * * * *

Q. You are thoroughly familiar with the workings of the Drivers' Association, and its relationship with the company?
A. To a certain extent; yes.
Q. Would you say that the Drivers' Association today operates and runs and has the same policies as it had from its beginning?
A. Yes, sir.
Q. It hasn't changed any, has it, to a great extent?
A. Not to any great extent.
Q. Your meetings are exactly the same as they were back in 1933, and '34, aren't they?
A. Just what do you mean by "meetings"?
Q. I mean, they are called the same way?
A. When we have one; yes.
Q. And your relationship with the company is about the same as it was then?

697 A. Yes.

Q. If the Drivers' Association was dominated back in 1934 by the company, it would still be dominated today, wouldn't it?
A. I imagine it would, but I can't see where it is dominated.

By Mr. SHAW:

Q. You said, whenever you have had meetings—when did you have meetings?

A. Whenever we have time.

Q. Well, as I understand the work you men do, you never have time. You are pretty busy men, aren't you?

A. Very true.

Q. And your duties take up most of your time?

A. Yes.

Q. When are meetings called? At whose instigation?

A. The representatives.

Q. Who decides when the meetings are to be held?

A. The representatives.

Q. Are there two types of meetings? That is, the meetings of the men with their representatives, and then the representatives jointly? Would you say there are two types of meetings
968 held jointly under the Association?

(Tr. 698–699):

A. Yes, sir.

Q. Now, when all the representatives come here to San Francisco for a meeting with Mr. Travis, or something of that sort, who calls that meeting?

A. The Chairman of the Board.

Q. The Chairman of the Board of the Drivers' Association?

A. Yes, sir.

Q. How often do you have those meetings?

A. It all depends on conditions, sometimes.

Q. Doesn't Mr. Travis ever call you in here?

A. Sometimes.

Q. Sometimes he does?

A. Yes.

Q. Your expenses are paid when you come here?

A. Our wages are paid. Our expenses are not paid, when he calls us in.

Q. Of course, your transportation is paid, because you all have passes, don't you?

A. Yes, sir.

Q. You come in on your regular Greyhound buses?

A. Yes, sir.

* * * * * * *

699 Q. Who takes the notes of your meetings that you hold?

A. Well, whoever happens to be around that can do it.

Trial Examiner Woon. To what meetings do you refer, counsel?

Mr. SHAW. I refer in this case to the meetings of their single representatives.

By Mr. SHAW:

Q. Who is the person around who can take them?

A. Somebody who is smart enough.

Q. And there is nobody smart enough, or able enough, except people who work in the office of your employers?

A. Not necessarily.

700 (Tr. 700–701):

Q. Is there anybody else who is able?

A. Mr. Dudgens.

Q. Dudgens?

A. Dudgens.

Q. Mr. Dudgens is one of the auditors of the company, isn't he?

A. He is representative of the clerks of Division 4.

Q. Isn't he also one of the auditors?

A. He works in the San Francisco terminal. I don't know whether he is an auditor or not. He is a ticket agent.

Q. Now, as I understand it, a certain amount of money is deducted from the men's pay to promote and foster this organization. Do you representatives have any idea of the financial standing of the organization?

A. Yes, sir.

Q. Are you furnished with reports from time to time as to what money is in the treasury, and how it has been expended?

A. Yes, sir.

Q. Who furnishes you with those reports?

A. The secretary of the Association.

Q. Well, now, will you tell us for what purposes the money is spent?

A. For the expenses of the representatives when they are on meetings, and also on meetings that they have to have with their
701 superintendents on taking up grievances, or something like that; for flowers for members of the Association; deaths, and for literature.

Q. You don't have a newspaper, do you?

A. Sir?

Q. You don't have a drivers' newspaper, do you?

A. No, sir.

Q. Who does the printing of your literature for you?

A. That, I don't know. You would have to ask the Chairman of the Board. He takes care of that.

Q. Well, when you stated that the representatives paid their own expenses when they come up here, you meant that their expenses are paid out of the general fund of the Association. Is that what you mean?

A. Right.

Q. None of this money is used for purposes of an educational campaign among the men?

A. No.

Q. None of it is used to be put away for strike benefit funds?

A. No, sir.

708 (Tr. 708):

Examination by Trial Examiner Wood:

* * * * * * *

Q. When was your last company union meeting?

A. About a year ago.

Q. About a year ago?

A. That is, with the drivers of Division 4. Do you mean the representatives' or drivers' meeting.

Q. No, the meetings where the men actually congregate in meeting.

A. About a year ago.

710 *Board's Exhibit 2*

Pacific Greyhound Lines, Inc.

(Controlled by Pacific Greyhound Corp., through which company is affiliated with Greyhound Corp., Great Northern Ry. Co. and Southern Pacific R. R.)

History: Incorporated Mar. 31, 1930, under the laws of California and acquired the properties of Pickwick Stages System, California Transit Co., Southern Pacific Motor Transit Co., Pacific Auto Stages and other motor coach companies operating along the Pacific Coast. The company assumed all outstanding liabilities and obligations of the constituent companies.

Company operates a motor coach system from Portland, Ore., to San Diego, Calif., thence east to El Paso, Tex., from Los Angeles to Albuquerque, New Mexico, and from San Francisco to Salt Lake City, Utah, together with branches and feeder lines serving intervening and adjacent territory. As of Dec. 31, 1934, operating unit extended over 8,131 route miles with a yearly mileage of approximately 23,000,000 miles; 312 buses being operated. Also has an arrangement with Transcontinental & Western Air, Inc., for combination air-bus passenger service.

Control: Company is controlled by Pacific Greyhound Corp. (formerly Pacific Transportation Securities, Inc.), common stock of which is owned by Greyhound Corp., Southern Pacific Co. and others.

Management: Officers: W. E. Travis, Pres.; H. C. Lucas, Vice-Pres. and Gen. Counsel; C. R. Harding, Vice-Pres., San Fran-
711 cisco; C. E. Wickman, Vice-Pres., Chicago; F. W. Ackerman, Auditor and Asst. to Pres.; G. W. Sellers, Sec. and Treas.; M. C. Frailey, Asst. Aud.; L. D. Jones, Gen. Manager and Acting Traffic Manager, San Francisco; J. C. Neph, Purchasing Agent, Oakland, Cal. Directors: O. S. Caesar, C. E. Wickman, Chicago; W. G. Filer, C. R. Harding, C. J. McDonald, W. E. Travis, W. A. Worthington, San Francisco; L. C. Gilman, Seattle, Wash.; G. W. Traer, Jr., Minneapolis, Minn. Annual Meeting: First Tuesday in Mar. at San Francisco. Office: 201 Pine St., San Francisco.

Board's Exhibit 12

Re: Case No. XXC-14, Pacific Greyhound Lines, Inc. & Brotherhood of Locomotive Firemen and Enginemen

MRS. ALICE M. ROSSETER, *Regional Director,*
Nat'l Labor Relations Board, Twentieth Region, 1095 Market Street, San Francisco, California.

DEAR MADAM: Reply to your letter of April 8th would have been made sooner were it not for unusual demands made upon our time by reason of Railroad Commission and Interstate Commerce Commission hearings of great importance to this Company.

The charge that former driver Sager was dismissed from service in violation of the National Labor Relations Act is entirely
712 without foundation. The fact is that Mr. Sager was dismissed because of accidents and infractions of Company rules.

In your letter you expressed the desire for information concerning the dismissal of Mr. Sager. Accordingly, we hand you herewith a memorandum concerning his personal record.

Since the date of dismissal, attention of company executives has been called to an additional circumstance which would, under our Company rules and the uniform application thereof by the Company, make his discharge imperative. In all fairness, we feel it proper that you be advised of this circumstance at the present time.

Rule 147, Pacific Greyhound Lines' Drivers Manual No. 1, provides that accidents of any nature involving, or that might involve the company, must be personally reported in detail and witness cards delivered by the driver, in person, to his superintendent or supervisor. The violation of this rule has uniformly resulted in dismissal from service.

In the case of Mr. Sager, the facts are that on Wednesday, April 24, 1935, he backed a bus into a parked truck and crushed its left fender. Immediately thereafter, in conversation with the driver of the truck, Sager admitted the accident was all his fault, but said that he did not wish to make any report to his company, telling the truck driver that if the accident were reported he would undoubtedly lose his driver's bonus and possibly his employment, and promising the truck driver that, if the latter would not report the accident
713 to Pacific Greyhound Lines, Sager would pay for all damages occasioned by reason of his having backed into the truck.

Sager never reported the accident and information concerning it was not received by us until after Sager's dismissal.

Trusting this information is sufficient for your purposes, I am

Very truly yours,

Encl. H. C. LUCAS.

SAGER, VINCENT RICHARD

HISTORY

Accidents Resulting in Discipline and Dismissal

4-16-32.—Bus had stopped at north end of Soledad Bridge to allow an oil truck, which was being followed by a Reo Truck, to cross. After allowing oil truck to clear bridge, bus started up and met Reo Truck on bridge. Reo Truck scraped side panels of bus. For failure to take proper precautionary measure by waiting for Reo Truck to cross bridge, and avoid accident, driver's bonus revoked 30 days.

3-16-34.—In bringing bus 918 into San Francisco terminal, car 524 was parked at right on Jessie St. near terminal entrance, with private car parked at left. In turning into depot, scraped right rear panel of 918 against front bumper of car 524—5 Demerits.

714 3-7-36—Special, Tanforan-San Francisco, about 6:50 P. M., approaching Colma in center lane of 3 lane highway, all lanes northbound. Near Colma intersection, other car in first lane cut at a 45 degree angle across second lane into third lane intending to cross street car tracks and enter southbound section of highway. Bus to the left rear of other car unable to stop when other car apparently stopped as it entered the third lane, and bus hit rear end of other car—Dismissed.

Infractions Resulting in Discipline

4-7-30—Warned that further speeding would mean dismissal.

9-29-31—Laid off 5 days account violation Rule 22, failing to check load, left passenger behind.

2-10-32—Operating schedule without proper cash fare equipment—Bonus revoked 30 days.

8-31-35—Failed to put off express shipment resulting in claim. In lieu of discipline, requested and was given permission to pay claim.

10-16-35—Violated cash fare rule. Picked up passenger at Atascadero and carried to San Luis Obispo before cutting cash fare—5 demerits assessed.

715 11-16-35—Failed to register in and report number of passengers picked up and discharged and number arriving San Francisco—Assessed 3 demerits.

Other Infractions:

4-25-31—Violated Rule No. 35—Following Too Closely—resulting in a rear end collision with vehicle preceding bus.

8-10-31—Warned account failure to post name plate.

7-19-33—Name plate not posted.

1-28-34—Driver operating Salinas turn-around, arrived Salinas 9:47 P. M., having 4 hour lay-over, scheduled return leaving Salinas

1:50 A. M. When in restaurant Sager was gambling, betting 25¢ and 50¢ a corner on a pin ball game, and was observed in booth pouring whiskey into glass from which he drank.

6-19-34—Insurance Inspector reported Sager speeding near Gilroy.

10-29-35—Operative reported Sager driving at speed of 50 to 55 miles per hour.

716 *Board's exhibit 15, constitution of the Brotherhood of Locomotive Firemen and Enginemen, "article 12", "qualification of applicants", sec. 28 (a)*

"An applicant for membership shall have served at least thirty (30) days as a locomotive fireman, engineman, engine hostler, hostler helper, engine dispatcher, employed handling engines in or
717 about round house or ash pit, in shop yards, locomotive works, industrial plants, motorman or helper on electric engines, motor or gas cars on roads where electric energy is used or has been substituted for steam, and shall be actually employed in one of these capacities, or holding seniority rights as such, at the time he makes his application; provided, he shall not be a member of any other labor organization, assuming to represent engineers, firemen, hostlers, or hostler helpers, except the Brotherhood of Locomotive Engineers, nor shall he be a member of any organization of employes which at any time, in any manner, endeavors to interfere with the policy or action of the Brotherhood. Engine hostlers or engine dispatchers are persons who actually handle and are responsible for the care of locomotives. Foremen who act as hostlers and receive hostlers' pay shall be eligible to membership."

"Article 19", "Constitution", "How Amended":

"Sec. 1. (a) The Constitution of the Grand Lodge and subordinate lodges, may be altered, amended, or repealed at a convention of the Grand Lodge, in the following manner:

(b) A lodge may, through its recording secretary and over the seal of the lodge, propose such amendments as may be deemed for the best interests of the Brotherhood.

* * * * * * *

(d) The proposed change shall quote in full the paragraph to be changed designating the article and section to which it belongs, and incorporating the alterations or amendments to be made. All amendments shall be filed with the General Secretary and Treasurer on or before the first day of January of the year in which the Convention is to be held.

(e) The General Secretary and Treasurer shall have all such alterations, amendments, and subjects pertaining to each section grouped, and deliver a copy to each member of the Committee on Constitution not later than the first week of February of the year in which the Convention is held.

(f) The Committee on Constitution shall consider the amendments and subjects referred to them and submit their recommenda-

tions to all subordinate lodges as provided in Article 1, Section 16, Paragraph (g).

(g) In submitting their report to the convention they shall make report on each section or subject for which amendments have been offered and said report shall be printed and copy furnished to each delegate.

(h) Amendments may be submitted by delegates to the reports of the committee when such report is being presented for the consideration of the Convention.

(i) It shall require a majority vote of the delegates present in favor of the report of the Committee on Constitution to amend the constitution or to bind the organization thereto."

718 *Board's Exhibit 16*

"That the International President, Assistant President, and General Secretary and Treasurer be, and they are hereby, authorized and directed to make a complete investigation of this new field of industry with a view to organizing and bringing into our Brotherhood all of the men employed in operating machines which are, or may become, common carriers, and

That, if as result of their investigation it is deemed advisable, the officers designated in the next above paragraph be, and they are hereby, authorized and empowered to make such changes or modifications of our laws as may be necessary to permit the carrying out of the purposes of these resolutions."

720 *Board's Exhibit 22-A*

PACIFIC GREYHOUND LINES, INC.,
OFFICE OF THE PRESIDENT,
San Francisco, August 17, 1933.

All employes:

A petition requesting that an election be held for the purpose of electing representatives to confer with the management on matters affecting their welfare has been received from the employes. It is the aim of the management to maintain, at all times, a hearty and harmonious relationship and it is, therefore, our pleasure to assure you of our fullest cooperation.

It is my suggestion that a committee of three members on each division be selected. One member shall be selected by the bus drivers. One shall be selected from the maintenance and store departments by the employes thereof. One shall be selected from the clerical and station departments by employes of this class. Detailed conditions intended to secure an accurate expression of the desires of the employes under which representatives will be chosen should be immediately prepared.

* * * * * * * *

I earnestly ask, therefore, the hearty cooperation of every employe to the end that we may successfully work together.

W. E. TRAVIS, *President.*

721 *Board's Exhibit 22-C*

PACIFIC GREYHOUND LINES,
OFFICE OF GENERAL MANAGER,
San Francisco, California, August 18th, 1933.

All employees:

Pursuant to petition signed by the employees requesting that an election be held for the purpose of electing employees representatives, notice is hereby given that in order to provide for the election of employee representatives, as well as to create machinery to adjust differences as they may arise and to permit a mutual understanding between the officers of Pacific Greyhound Lines, and the employees thereof, a vote of the employees will be taken by secret ballot in each division to elect division committees comprising three representatives to represent the employees. One member shall be elected by the drivers as their representative, one member shall be elected by the maintenance and store department employees as their representative, and one member shall be elected by the clerical and station employees as their representative.

Nominations will be held on Wednesday, August 23, 1933. Drivers, maintenance and store departments, and clerical and station employees shall be entitled to petition for nominations from among their respective groups. Employees of these respective groups who have had one year or more continuous service with the company
722 prior to date of election, who are American citizens and 21 years of age or over on date of election, shall be eligible for the office of division representative. This also includes those on formal leave of absence and sick leave.

Nominations will be by petition. Petitions shall be signed by five or more drivers of the division on which employed; by five or more qualified voters of the maintenance and store departments; and by five or more qualified voters of the clerical and station employees of the division on which employed, will be sufficient to place the name of the one petitioned for upon the ballot, for each separate group in that division. Where a number of employees on a particular division does not permit application of the aforementioned rule, petition of majority of employees in each classification will suffice.

Blank forms for petitions may be obtained from your supervisory officer. These forms must be filled out in accordance with instructions thereon, signed by not less than the requisite number of voters and mailed so as to reach your supervisory officer not later than Wednesday, August 23, 1933. Names of the petitioners will be checked against the records to determine whether the employees are in active service and eligible as petitioners and nominees.

Election notices showing the names of employes who have been duly nominated as candidates for office of representative for the respective groups will be posted on bulletin boards where the above named classes of employees are stationed.

723 Election ballot for each group on each division will contain names of all those placed in nomination, as result of petitions on that division.

Employees voting by mail will be furnished a ballot in a sealed envelope prior to date of election by their supervisory officer.

Employees voting by ballot boxes will be furnished a ballot at the polls on the day of election.

Each employee will vote for one candidate only to be constituted a member of the division committee. The candidate receiving the largest number of votes will hold office for one year. The terms of office shall date from the first day of September 1933 to December 31, 1934, and thereafter terms of office shall date from the first day of January of each year.

Election for division representatives will be held at the various division headquarters and each supervisory officer will be furnished ballots and charged with the proper conduction of the election.

Employees who are voting by mail will be furnished ballots by their supervisory officer and also envelopes for proper forwarding by United States mail to division headquarters.

Wednesday, August 30, 1933, is fixed as date of election and all ballots received by the tellers of the election prior to 3:00 P. M., Wednesday, August 30, 1933, will be counted, after checking same against the election roll to see that only employees voted.

724 The representatives elected at the coming election will be your representatives before the supervisory officers to handle all matters that may arise and adopt the by-laws for the government of employees representation. It is therefore important that all voters avail themselves of the right of franchise.

In the event an employee does not secure a ballot, he should immediately notify his supervisory officer, who will arrange to furnish it.

Immediately following the counting of the ballots, the names of the successful candidates will be posted on bulletin boards. The three division representatives elected by the employees will meet at their division headquarters Tuesday, September 5, 1933, to select a chairman, a secretary and adopt by-laws for the government of employee representation and conduct such further business as may come before them.

L. D. JONES, *General Manager.*

Board's Exhibit 22D

SAN FRANCISCO, *August 28, 1933.*

To all Drivers at San Francisco and San Jose, Division #4:

Election of Division Representatives will be held on August 30th.

At San Francisco and San Jose, ballot boxes will be used. Ballots are to be secured from Dispatcher at San Francisco, and from Agent at San Jose. Each ballot contains the names of those nominated

725 for the office of Division Representative. Simply mark an "X" in front of the name of the person for whom you wish to vote; fold the ballot and place it in the ballot box.

To drivers located at points other than San Francisco and San Jose, ballots have been mailed.

Attached roster shows where you are to get your ballot. However, if some of the local men listed for San Jose find it more convenient to vote at San Francisco, they may do so.

Please note carefully and be ready to vote Wednesday, August 30th. We want to see 100% returns on this Division, and trust that each and every one of you will express your choice.

J. W. KRUG, *Superintendent.*

Board's Exhibit 25

All Drivers Pacific Greyhound Lines:

It has been the hope of most every driver that a union for Bus Drivers would be formed. A definite and independent organization to function along the lines of obtaining certain reforms in working conditions with the ability to change certain existing undesirable disciplinary rules and regulations and as a means of security against possible future undesirable conditions. Also to act in harmony with the present Government Administration in its Recovery Program.

The drivers on the Redwood Division, No. 5, have put forth
726 their initiative to start such an organization under the designation "Brotherhood of Motorcoach Operators."

On this same division each and every driver has been informed of his rights and the possibilities contained in the basic principles of this organization and the membership is one hundred percent. There have been two officers elected from the ranks to carry out the work through the entire system—Chas. H. Perryman, President, and Milton L. Seeman, Secretary. Mr. C. J. Tauzer, attorney-at-law, has been engaged as business manager and to render such service as may be needed in his line of profession. Mr. Tauzer's ability and integrity can not be too highly spoken of for this post.

It is the object of this organization to meet with the employers in their differences and problems and to compromise at a point between the ideal and the practical that will be just and fair to all parties concerned. This, as you know from past experiences, can not be done in our separate and individual capacities or through the present Drivers' Association.

The present agreement under which you are now working should become null and void upon forming this new organization, due to a verbal agreement entered into with Mr. Travis and the drivers just before the N. R. A. ballot was cast, where Mr. Travis pleaded that you vote down the Brotherhood of Locomotive Firemen and Enginemen by voting for the present Company Union. Mr. Travis

727 promised to release the obligation of the present agreement and support the efforts in forming a union of the drivers' choice.

* * * * * * *

Your sincere cooperation is solicited and expected.

BROTHERHOOD OF MOTOR COACH OPERATORS.
CHAS. H. PERRYMAN.
MILTON L. SEEMAN.

Board's Exhibit 26

National Labor Relations Board

In the Matter of Pacific Greyhound Lines, Inc. and Charles H. Perryman and Milton L. Seeman

Case No. 292B, Decision April 11, 1936

On November 14, 1934, Charles H. Perryman and Milton L. Seeman, bus drivers for the Pacific Greyhound Lines, Inc., of San Francisco, California, complained to the Regional Labor Board for the Sixteenth District that they had been dismissed by the company in October. They were president and secretary, respectively, of the Independent Brotherhood of Motor Coach Operators (hereinafter called "the Union") and they attributed their discharges to their union affiliation and activities. The Regional Board held a hearing on their cases on December 19th, and on January 3, 1935, found the discharges had been made in violation of Section 7 (a), and recommended the reinstatement of each man to the position
728 he occupied at the time of his discharge or its equivalent. The company failed to comply with this recommendation, the case was referred to this Board, and the parties were offered an opportunity to be heard here or to submit briefs. The company transmitted a statement of its position and the union submitted a brief based on the record.

* * * * * * *

Findings.—The Pacific Greyhound Lines, Inc., has by its discharge of Charles H. Perryman and Milton L. Seeman interfered with the self-organization of its employees in violation of Section 7 (a) of the National Industrial Recovery Act as incorporated in the Code for the Motor Bus Industry.

Enforcement.—Unless within ten days from the date of this decision the Pacific Greyhound Lines, Inc., has notified this Board in writing that it has offered Charles H. Perryman and Milton L. Seeman immediate reinstatement in their former positions or positions equivalent thereto, with back pay from January 3, 1935, the date of the recommendation by the Regional Board, the matter will be referred to the Compliance Division of the National Recovery

Administration and to other agencies of the Government for appropriate action.

NATIONAL LABOR RELATIONS BOARD.
FRANCIS BIDDLE, *Chairman.*
H. A. MILLIS.
EDWIN S. SMITH.

729 *Board's Exhibit 29*

JANUARY 27, 1936.

Mr. V. R. SAGER,
305 Hyde Street, San Francisco, Calif.

DEAR DICK: I am returning to you a package left in this office by Mrs. Sager.

From information reaching me within the last few days, it is very apparent that some narrow minded drivers are assuming that I am in favor of their joining the Brotherhood. Needless to say, you well know my feelings toward the Brotherhood, or any other organization, so far as our men joining it is concerned, as long as they are receiving fair treatment and good wages. This was fully discussed with you a couple of years ago, and it should be unnecessary for me to have to say that I think the boys are making a mistake by associating themselves with any organization that is going to require them to pay high dues, when the benefits that they might receive would be negligible.

Information has also reached me that it is thought that I carry a union card in the Brotherhood. This information is absolutely incorrect. At no time have I ever belonged to the Brotherhood, nor do I carry a card in any labor organization. I trust any false impression existing in the minds of any of the men will be corrected by you.

Yours very truly,

L. D. JONES.

730 *Board's Exhibit 30*

No. 913

SAN FRANCISCO, *April 2nd, 1936.*

CERTIFICATE OF SERVICE

This is to certify that Vincent Richard Sager description, as filed with personal record, dated December 1st, 1928, age thirty-three, height five feet eleven in., weight 160 lbs., color of eyes hazel, color of hair brown, complexion fair, marks or deformity none, has been employed in the capacity of driver at Phoenix, Lordsburg, Miami, Ariz., Oakland, Calif., San Francisco, in the Operating Department of the Southern Pacific Motor Transport Co., Pickwick Stages Sys-

tem, California Transit Company, Pacific Greyhound Lines from December 1st, 1928 to Jan. 13, 1929, S. P. M. T. Co., January 19th, 1929 to July 1st, 1929—Pickwick Stages System, July 1st, 1929 to November 17th, 1929, Calif. Transit Company, November 17th, 1929 to March 12th, 1936, Pacific Greyhound Lines. Services generally. Date of leaving service and cause. (Specify conduct, so as to convey clear understanding) March 12th, 1936 discharged for responsibility of accident.

Remarks:

J. W. KRUG,
Title Superintendent.

Signature of Employee.
[J. W. K. Apr. 8, 1936.]

731 *Board's Exhibit 31A*

JANUARY 15, 1933.

Mr. VINCENT R. SAGER,
Pacific Greyhound Lines, San Francisco, California.

It is with extreme pleasure that we present to you, on behalf of the management of Pacific Greyhound Lines, this token of recognition for your splendid service as a driver since December 1, 1928.

Perusal of your personal record has revealed that you achieved the commendable feat of completing the Safety Contest, extending from July 1st, to December 31st, 1932, without an accident, and also, your record indicates you have, during this period, endeavored to perform your duties in such a manner as to make yourself a valuable member of our company.

Your non-accident record is a noteworthy accomplishment, and it is doubly significant in a transportation company where safety is of such paramount importance.

We take this opportunity to extend felicitations and encouragement to you from the company as a whole, and we trust that your excellent record as a safe and valuable driver will continue to the end that we may soon attain system-wide safety, the
732 goal so essentially vital to successful bus transportation.

Sincerely,

[SEAL.]

L. D. JONES,
General Manager.
Supervisor—Safety & Insurance.
J. W. KRUG,
Superintendent.

Board's Exhibit 31B

[NOTE—Letter from Respondent to Sager, dated July 15, 1933. Same as Board Exhibit 31A, except that it covers period from July 1, 1932, to June 30, 1933.]

Board's Exhibit 31C

PACIFIC GREYHOUND LINES,
San Francisco, November 9, 1932.

Mr. VINCENT R. SAGER:

It is with pleasure that I take this opportunity to congratulate you for completing a clear driving record of six months from May 1st, 1932, at which time your regular bonus of ¼¢ per mile was revoked for a period of thirty days and your special ¼¢ per mile bonus for a period of six months as discipline for accident with coach 572 on April 16th, 1932. Your special bonus has been reinstated as of November 1st, 1932.

Such a record indicates that your interest in your work is 100%
733 and that you are doing your share toward building up and maintaining a unique transportation service and safety record for Pacific Greyhound Lines.

It is my sincere hope that your effort to maintain the record achieved will continue and that bonus revocation will not again be necessary.

J. W. KRUG, *Superintendent.*

Board's Exhibit 31D

SAN FRANCISCO, CALIF., *June 18, 1934.*

Driver V. R. SAGER,
Division No. 4.

DEAR SIR: Bonus check in your favor for the six months' period from December 1st, 1933, to June 1st, 1934, is enclosed herewith.

I think, in general, there has been an improved showing made by the drivers. There, however, have been many complaints from the Railroad Commission of the State of California as to "speeding." There has, also been too many accidents.

While your personal record may be clear, I am sure that the example you may set, and the advice you may give other drivers to help them obtain a clear record will help produce the results we desire. Your cooperation will be very much appreciated.

784 A bulletin was sent out a few days ago on the subject of

[redacted]

I don't think any warning is needed, but once again, no excuse for speeding will be accepted.

W. E. TRAVIS, *President.*

Board's Exhibit 31E

PACIFIC GREYHOUND LINES, INC.,
OFFICE OF THE PRESIDENT,
San Francisco, California, December 19, 1935.

Driver V. R. SAGER,
Division No. 4

DEAR SIR: The attached check represents full bonus to which you were entitled at the "top rate" of three mills per mile, as all demerits outstanding against drivers as of December 1, 1935, were excused. Payment of full bonus to all, signifies our desire to be able to depend upon each driver individually for his loyalty, efficiency, obedience to rules and safe performance with respect to avoiding accidents.

During the past four months several bad accidents were permitted to occur. These have resulted in payment of heavy claims, thereby greatly harming both the company, and the personnel. We don't want accidents, and that is what you don't want, as they harm many and help no one. Therefore, as a loyal, efficient and safe driver, you must continue to heed the warning that measuring up to the driving standard of the company, means maintaining a clear acci-
735 dent record. There must be no chance-taking, speeding, indulging in other unsafe driving habits or avoidable accidents.

I trust that the bonus check will do its share toward helping you to have a Merry Christmas and a Happy New Year, and that I may depend upon you personally to do everything necessary to make 1936 a year of Efficient Bus Service and No Accidents.

W. E. TRAVIS, *President.*

Board's Exhibit 32

PICKWICK HOTEL,
San Francisco, Calif., October 22nd, 1935.

Mr. R. C. BROWN,
c/o *Pacific Greyhound Lines, 660 So. Los Angeles Street, Los Angeles, California.*

DEAR MR. BROWN: As you are aware, the Albuquerque Division No. 8, is at this time without a Representative in the Drivers Association, due to the resignation of Mr. Frank M. Rapp.

While we naturally regret the loss of Mr. Rapp, I take great pleasure in appointing you to fill his unexpired term as Representative of Division No. 8. I believe you will find a great deal of pleasure in your relationship with the men, the other Representatives, and the Management, and considerable satisfaction in the work.

736 Suggest you get in touch with Mr. Rapp at your earliest convenience, and secure from him the copy of the Working Agreement and other papers which are to be turned over to you for your information and guidance in handling Association matters.

If there is anything I can do to assist you at any time, do not hesitate to call upon me.

With kindest regards,

Very truly yours,

AMOS S. MEININGER,
President, Drivers Association, Pacific Greyhound Lines.

cc—Mr. A. G. Moody, Rep., Division #1, El Paso; Mr. C. A. Calhoun, Rep., Division #2, Phoenix; Mr. E. C. Hahn, Rep., Division #3, Los Angeles; Mr. A. F. Martin, Rep., Division #4, San Francisco; Mr. E. S. Peterson, Rep., Division #5, Belvedere; Mr. V. Tindall, Rep., Division #7, Portland; Mr. P. I. Johnson, Secretary, Albuquerque.

Board's Exhibit 33A

MARCH 23, 1936.

Mr. W. E. TRAVIS,
President, Pacific Greyhound Lines, Inc., 201 Pine St., San Francisco, Calif.

DEAR SIR: Referring to conference your office begining 11:50
737 A. M. and ending 12:10 P. M. on March 18, 1936, at which time you declined to reinstate me, after I was discharged on March 18, 1936, for accident in which I was involved on March 7, 1936, at about 6:45 P. M. at Colma, but responsibility for which accident I disclaim.

During our conference you stated that I was dismissed because of the "multiplicity of accidents" appearing on my record as a driver for the Pacific Greyhound Lines, Inc. This statement came as a surprise to me, since to my knowledge I have had very little difficulty as a driver from my date of employment on December 1, 1928.

Since conferring with you I have gone over my past performance from my own records and find that for the period of seven years and three months in which I have operated buses for the Pacific Greyhound Lines, Inc., I have covered approximately 504,000 miles, and during this time have only been held responsible for two accidents, other than the one for which I was held responsible on March 7, 1936.

On April 16, 1932, I was forced to scrape the guard rail on a bridge at Soledad in an effort to prevent being side-swiped by another car moving in the opposite direction, the driver of which did not remain in his lane of traffic but crowded over the center line, and thus forced me against the guard rail.

On March 16, 1934, I broke the side panel out of a car, and accepted five demerits for my partial responsibility in this case.

738 The third and last accident for which I have been held responsible was the one on March 7, 1936, for which I was discharged, but for which I feel I am not responsible for the reason that at the time the accident occurred the traffic conditions were such that there was nothing I could do to prevent hitting the car in front

of me, since the driver of same turned abruptly to the left from a position straddling the line separating the outside and middle lanes, in the act of cutting diagonally across the center and inside lanes for the purpose of making a left hand turn at a point of about 150 feet south of the intersection of Mission and Market streets in Colma. When the driver of the private operated automobile got almost across the center lane he suddenly and without warning jammed on his brakes and thus coming to a short stop after having cut in on me made it impossible for me to prevent hitting him, since I could turn neither to the right nor to the left, due to the heavy traffic in all traffic lanes.

Just prior to the accident I was moving at a speed of about 15 to 20 miles per hour after having reduced speed from about 40 miles per hour in a 45 mile per hour speed zone. Traffic was very heavy in all lanes, and all cars were moving at about the same speed. This accident would not have happened had the driver of the private operated automobile not attempted to cut diagonally across traffic lanes, or if after starting he had not suddenly stopped without warning. In any event under the circumstances which existed I do
739 not feel I was at fault and cannot see how I can be justly held responsible.

In addition to the three accidents above referred to I have been held responsible for two minor infractions of Company rules. On November 2, 1935, I failed to register in and report the number of passengers picked up and discharged enroute and the number of passengers upon arrival at San Francisco Terminal. For this violation I was assessed three demerits on November 16, 1935. Also on November 16, 1935, I was assessed five demerits for picking up passenger at Atascadero on October 16, 1935, and carrying this passenger into San Luis Obispo before completely cutting a cash fare receipt.

Outside of the aforementioned accidents and infractions of rules referred to, my record as a driver for the Pacific Greyhound Lines, Inc., is clear, which covers a period of over seven years. It is, of course, understood, however, that I, like every other driver with my length of service, have had other experiences, but in none of these experiences have I been held responsible, except possibly in one or two instances where minor infractions occurred, where circumstances were more or less exonerating.

While it is true I have been involved in some of the usual experiences thru which all drivers pass, it is also true that I have performed commendable service in behalf of the company. As evidence of which I quote below two letters sent me under dates of July 15, 1933, and January 15, 1933:

* * * * * * *

740 [Clerk's Note.—Here are quoted the letters of the respondent to Sager, dated January 15, 1933, and July 15, 1933, being Board's Exhibits 31A and 31B, respectively.]

In addition to the above I also have letters of commendation dated November 8, 1932, June 18, 1934, and December 19, 1935.

As I explained to you in conference on March 18th I was required to make the trip on March 7, 1936, from San Francisco Terminal to Tanforan Race Track and return under protest. I protested making this trip since I had worked the previous night on my regular assignment and stood to go out the following morning on my regular assignment, and felt this extra trip would interfere with my rest period. I do not claim this had anything to do with the accident but do feel that drivers should not be required to work during assigned rest intervals.

I also called to your attention at our conference the fact that I was removed from service without investigation or hearing, and since I am sure you do not condone this method of procedure I am again bringing this to your attention.

In consideration of the foregoing, I feel when full consideration is given the circumstances surrounding my case that I have been unjustly dismissed, particularly since my record as a driver compares favorably with the average driver, and specifically since I was dismissed from service without investigation or hearing for an accident for which I was not responsible and for which other drivers have been permitted to work when circumstances were similar.

741 In view of what has taken place I respectfully request my reinstatement with pay for the time I have lost due to my improper removal from service.

Awaiting your reply, I am

Very truly yours,

V. R. SAGER,

Driver, Pacific Greyhound Lines, Inc.

1360 O'Farrell St., San Francisco, Calif.

Board's exhibit 34

To the Brotherhood of Locomotive Firemen and Enginemen and their accredited representatives:

I hereby give notice of my desire to withdraw the power of authority heretofore given you to represent me in all matters pertaining to employment, wages and working conditions with Pacific Greyhound Lines, Inc., and/or Southern Pacific Company (Pacific Lines) and I hereby revoke such power and authority.

(Date)------

Board's exhibit 35

Talk of President W. E. Travis to Drivers of Pacific Greyhound Lines, Held in Oakland, California, Thursday Night, April 19, 1934

* * * * * * *

742 It isn't necessary for me to tell you what my attitude is toward the Brotherhood. On more than one occasion, by talking with you individually and in groups and by sending bulletins to you, I have, I think, clearly expressed my feelings. If

there is anyone among you who does not understand how I feel, it's because you don't understand plain English.

* * * * * * *

I don't think, even if you vote for the Brotherhood it would mean anything. You have a contract with the Drivers' Association. I am relying not only on the integrity of that contract itself, but also on the integrity of the men who signed it. In signing it, Pacific Greyhound felt it was bound to live up to its terms. I trust that each and every one of you feel the same way.

If, by hook or crook, the Brotherhood should win this election and demand from me another contract, my answer would be that there is already a duly executed contract and that no further contract would be made. Many industries have refused to give any contracts. Should this occur in our case, the probable procedure would be to request mediation through some mediation board, all of which would take time, not days, but weeks and months to straighten out. In the meantime, we would be at odds and ends. I don't think any of us are looking for that sort of a mess. You have already my promise of fair treatment and in conclusion, I wish to reaffirm it. Thanks.

743 *Board's Exhibit 36*

San Francisco, April 20, 1934.

Mr. E. A. HADFIELD, *Portland;*
Mr. J. H. HODGE, *Los Angeles;*
Mr. A. W. BOSO, *El Paso;*
Mr. A. B. FREYSCHLAG, *Oakland;*
Mr. E. F. PARKS, *Phoenix;*
Mr. J. W. KRUG, *San Francisco;*
Mr. WALTER MAXWELL, *Santa Rosa;*
Mr. A. G. MOODY, *El Paso;*
Mr. C. A. CALHOUN, *Phoenix;*
Mr. E. A. RAYMOND, *Los Angeles;*
Mr. A. F. MARTIN, *San Francisco;*
Mr. H. E. GOSELIN, *Santa Rosa;*
Mr. A. S. MEININGER, *Oakland;*
Mr. VERLE TINDALL, *Portland;*
Mr. F. M. RAPP, *Flagstaff;*

GENTLEMEN: In reference to the telegram of event date, the report mentioned therein is a verbatim statement of the talk made by me last night before drivers in Oakland. These drivers came from Oakland, San Francisco, Santa Cruz, San Jose, Santa Rosa, Vallejo, Sacramento, and Stockton. No expression of opinion was asked, but from the statements made and the talk between themselves there is no question but that almost the universal decision was that the Brotherhood was not wanted. It was felt that the election did not give the drivers the free choice of representation that was intended in the excutive order of President Roosevelt in that the only

744 union outside of the Drivers Association mentioned was the Brotherhood of Locomotive Firemen and Enginemen, and this for the reason stated in my talk it was felt was not desired.

* * * * * * *

As expressed, it is necessary to impress the drivers with the danger that confronts not only them but the company. It seems to me that the best way to proceed is to call a meeting and to read to them, word by word, my talk, exhibiting the photostatic copies which will be contained in the enclosure and making such further explanation as will make each and every man think for himself and act for his best interest.

* * * * * * *

I have every confidence in the judgment of the men and have no doubt of the outcome, but you should use your best endeavor to have each and every man vote for the Drivers Association, that this "big, bad wolf" cannot again menace us in the future.

We won't go further into the argument of the Brotherhood beyond the one statement that it is inconceivable that any thinking man in the bus industry could affiliate himself with the Brotherhood that represents, as it has and does, the employees of a railroad that is so highly competitive with the bus industry.

I don't want these exhibits or letters out of your hands. They should be returned to this office after they have been read to the men.

745 If any man that you come in contact with fails to receive a ballot, or to vote, have his name and address in my office not later than Wednesday, by wire if necessary, that a ballot may be sent to him for his signature and return to the Regional Labor Board. It is most important that every man vote and that a small percentage be cast for the Brotherhood as possible.

I am depending not only on your support and loyalty, but on the support and loyalty of every man in the employ of the Pacific Greyhound. I can assure you, one and all, that your efforts will be appreciated.

W. E. Travis.

The following gentlemen will also please consider this letter addressed to them and act in accordance therewith:

Mr. Adams, Eugene; Mr. Shepherd, Eureka; Mr. Stainback, Redding; Mr. Birch, Salinas; Mr. Blackburn, El Centro; Mr. Walker, Sacramento; Mr. Maderas, Reno; Mr. Duval, Vallejo; Mr. Wallace, Modesto; Mr. Wood, San Jose; Mr. Taylor, Salem; Mr. Farmer, Medford; Mr. Horvath, Tiburon; Mr. Purcell, San Luis Ob.;
746 Mr. Goforth, San Diego; Mr. Head, Flagstaff; Mr. Phelps, Albuquerque; Mr. Cooper, Salt Lake City; Mr. Lambercy, Stockton; Mr. Dylhoff, Fresno; Mr. Hyer, Santa Cruz.

Board's Exhibit 38

Drivers Association, Pacific Greyhound Lines

CONSTITUTION AND BY-LAWS

* * * * * * *

Article III.—Membership and Dues

SECTION 1. All drivers actively engaged in the service of Pacific Greyhound Lines Inc. who are not in a supervisory position, are entitled to Membership in this Association. Membership in this Association shall terminate on severance of active employment with the Company, or upon assuming position in conflict with membership requirements as defined herein.

SECTION 2. Monthly dues of twenty-five cents (25¢) shall constitute the entire cost of membership in this Association. This money shall be used to cover necessary expenses of representatives when actually engaged in presentation of matters before the management, and then only when such presentation interferes with their regular employment, and to cover such other expenditures and
747 actual expenses as may be authorized by the Board of Governors or the Executive Committee.

SECTION 3. In order to facilitate the collection of monthly dues, members shall sign a deduction order at the time Application for membership is signed, authorizing deduction of One Dollar ($1.00) to be made from the first period pay due for the months of October, February, and June, each deduction representing Four (4) Months dues in the Association. The monies so collected by the Company shall be deposited in a bank to the credit of this Association.

* * * * * * *

Article IV.—Representation

SECTION 1. Each division of this Association shall elect a representative from among its members. Nominations and elections shall be conducted as prescribed in Article VII. Representatives shall be elected for a term of one year.

SECTION 2. The representatives of the divisions shall constitute the Board of Governors of this Association. Immediately after their election the representatives shall meet and organize, and select from their number one member who shall be known as the "President of the Association," one member who shall be known as the "Vice President of the Association" and a third member who shall be known as the "Secretary-Treasurer of the Association."

These three officers shall constitute the Executive Committee of the Association.

748 Article V.—Duties and Powers of Officers and Representatives

SECTION 1. Division Representatives.

It shall be the duty of the representatives of each division to present any and all prejudicial, controversial, discriminatory, or beneficial matters affecting a member or the members of his division, to the Company's supervisorial officer of his division, to the managing officers of the Company and/or to the Board of Governors and Executive Committee of this Association.

SECTION 2. Board of Governors.

It shall be the duty of the Board of Governors to consider and act upon any prejudicial, controversial, discriminatory, or beneficial matters generally affecting the members of this Association and the Company, and they shall be empowered to enter into written contracts with the Company for and on behalf of the Association, which contracts when executed by both parties shall be binding upon the Association and the members.

SECTION 3. Executive Committee.

It shall be the duty of the Executive Committee to present to the managing officers of the Company all matters of any prejudicial, controversial, discriminatory, or beneficial nature generally affecting the members of the Association and the Company.

* * * * * * *

SECTION 9. Meetings of the Board of Governors shall be held at least once a year as soon after election as is practicable, and
749 at such other times as either the President or three members of the Board of Governors shall determine.

SECTION 10. Meetings of the Executive Committee shall be held at least once a month and oftener at the call of the President or any two members of the committee.

* * * * * * *

SECTION 12. Place of Meetings.

Division Meetings shall be held at such points on the Division as the members thereof by a majority vote shall determine.

Except in cases of emergency, all meetings of the Board of Governors and of the Executive Committee shall be held either in San Francisco, Oakland, or Los Angeles as determined by a majority vote of the members thereof.

SECTION 13. Quorum.

At all Division Meetings ____ percent of the membership of the division shall constitute a quorum for the transaction of business.

SECTION 14. Division Meetings.

Division Meetings shall be held at least once a month at the call of the representative of the division.

Article VI.—Qualifications of Voters and Representatives

SECTION 1. Members in good standing shall be entitled to petition for nominees and to vote for candidates for office of representative of their respective division.

SECTION 2. Members in good standing, who on the date of
750 election or appointment, have to their credit one or more years of active service as a driver for Pacific Greyhound Lines Inc. and who are American citizens, 21 years of age or over, shall be eligible to become candidates for the office of representative, or to be appointed representative to fill any unexpired term.

Board's Exhibit 39

Agreement Between Pacific Greyhound Lines, Inc., and Drivers' Association, Pacific Greyhound Lines

It is hereby understood and agreed by and between the management of Pacific Greyhound Lines, Inc., and Drivers' Association, Pacific Greyhound Lines, that the following rules and regulations governing hours of service, rates of pay, and working conditions of drivers will be in effect on and after October 1, 1933.

* * * * * * *

Article X.—Appeals

SEC. 1 (a). A driver who considers that an injustice has been done him in any matter shall, within ten (10) days, appeal to his supervisory officer, who shall give him a hearing at an early date. By "supervisory officer" is meant the division superintendent.

751 (b) Such employee may at such hearing be accompanied by representative covered by these regulations, who shall have the right to assist him in presenting his case.

SEC. 2 (a). After his appeal has been acted upon by such supervisory officer, the driver may, if he so desires, either personally or through his representative, appeal successively to the general manager and to the president of the company.

(b) As a condition precedent to presenting such appeal to the general manager and/or to the president, a complete statement of agreed facts shall be prepared by the driver and his supervisory officer and submitted with the appeal.

(c) Controverted facts shall be likewise submitted in the form of separate statements by such driver and such supervisory officer.

(d) Copies of agreed statement of facts shall be retained by both the supervisory officer and the driver, and each shall furnish to the other a copy of his statement of controverted facts.

(e) After the statements of fact have been so presented and submitted a driver may present his case on appeal orally either in person or through his representative.

SEC. 3. In all cases the decision of the president shall be final.

Article XI.—Board of Arbitration

Sec. 1. In case the parties hereto shall disagree as to the
752 proper meaning or application of any provision of this Agreement, the matter shall be referred to a board of arbitration, consisting of three arbiters, one of whom shall be chosen by the company, one by the representatives of the drivers, and a third to be selected as hereinafter set forth.

If either the company or drivers fail for a period of ten (10) days after written demand to select an arbiter, then such arbiter shall be designated by the senior judge of the United States Circuit Court of Appeal for the Ninth District.

The third of such three arbiters shall be chosen by the first two selected or designated arbiters, or if said first two arbiters fail, for a period of ten (10) days after the designation of the second arbiter, to agree upon a third arbiter, then such third arbiter shall be selected by the senior judge of the United States Circuit Court of Appeals for the Ninth District. The decision of any two of the three arbiters so selected shall be final and binding upon the parties hereto.

Article XII.—Notice of Change in Above Rules and Regulations

Sec. 1. During the term of this Agreement, should either the management or the drivers desire to change, add to or delete any or all of these regulations, the party desiring to make such change shall notify the other party in writing of the desired change, and no change shall be made except by mutual consent of the parties concerned.

753 Article XIII

This Agreement, unless modified or changed under the provisions of Article XII above, shall remain in effect so long as the National Recovery Act is in effect and thereafter shall be extended from year to year unless terminated at the end of an extended year upon notice being given by the party desiring to terminate, not less than sixty (60) days prior to the end of such year. After notice of termination, however, the parties hereto are entitled to a conference with respect to modifying or continuing the Agreement.

Board's Exhibit 42

SAN FRANCISCO, CALIF., *March 25, 1936.*

Driver HENRY A. CAREY,

Division—Division 3:

It is with great pleasure I am able to inform you that on December 16, 1935, you completed 1 year's non-accident record.

Suitable award indicating 1 year's non-accident driving record will be presented to you at our next tendering of awards.

EARL HUMBERT,
Supervisor-Safety & Insurance.

cc—Superintendent: J. H. Hogan.
cc—Personal Record.

754 *Board's Exhibit 40*

SAGER, VINCENT RICHARD

Entered Service December 1, 1929

HISTORY

Accidents Resulting in Discipline

4-16-32—Bus had stopped at north end of Soledad Bridge to allow truck to cross. Bus started across bridge and when about ¾ths across a Reo truck entered. Bus kept to right with right wheels against guard rail. Reo had sufficient clearance but swerved to left and scraped side panels of bus. Bus completely on right side of center line. Bonus revoked 30 days.

3-16-34—In bringing bus 918 into San Francisco terminal, car 524 was parked at right on Jessie St. near terminal entrance, with private car parked at left. In turning into depot, scraped right rear panel of 918 against front bumper of car 524—5 Demerits.

3-7-36—Special, Tanforan-San Francisco, about 6:50 P. M., approaching Colma on 3 lane highway, all lanes northbound. Near Colma intersection car ahead intended to turn left across street
755 car tracks and enter southbound section of highway. Bus hit rear end of other car—Dismissed.

Other Accidents

8-3-29—Backing bus from water hydrant to clear other cars which were parked, bus backed into Ford touring car, damaging left front tire of Ford.

11-17-29—Bus stopped in line of traffic at railroad crossing. Other car ran into rear of bus.

3-3-30—Bus proceeding in southerly direction across intersection, town of Willows, when nearly across, other car going in easterly direction attempted to cross in front of bus. To prevent collision bus cut to extreme left and truck light post.

5-13-30—Bus proceeding south one-quarter mile north of Sargent station when steering gear broke and bus plunged down 10 ft. embankment.

7-8-30—Bus proceeding down narrow grade near Mountain House on extreme right side of road. In meeting and passing approaching car bus bumper clipped left rear fender of other car. It seemed

there was sufficient space for passing but other car did not pull over quite far enough.

7-13-30—Bus northbound near Mayfield in center lane, came upon detour sign in outer lane making it necessary for
756 traffic in outer lane to cut into inner lane. As bus approached sign, other car in outer lane cut in front of bus and bus hit rear of other car.

8-27-30—Near Santa Margarita, bus coming over a rise in highway about 40 mph, for a moment bus lights shone above highway account being on crest of rise, when lights again shone on highway, driver saw a pedestrian walking on highway. Brakes applied and bus swerved to left, pedestrian moved in same direction, but then swerved right and pedestrian became confused and ran into path of bus and was killed.

10-5-30—Driver parked bus in front of San Juan agency and went inside. While in agency a motorcycle skidded into rear of bus in attempting to pass around another car which was making a left turn.

4-25-31—Bus following other car on Howard St., San Francisco. At intersection of 7th & Howard other car stopped for signal, and bus following at distance of 25 ft. could not stop before striking rear of other car.

8-7-31—Redwood City, bus forced to make quick stop account woman running across highway in front of bus to board same, car following bus failed to stop in time to avoid striking rear bumper of bus.

757 12-22-32—Bus nearing Salinas, lady passenger while attempting to turn light on or off cut her finger on the cowel of the compartment light.

1-6-33—Lady passenger endeavoring to get into her berth, stood on suitcase and slipped, skinning her leg.

5-16-34—Bus driver assisting passengers to alight after completion of run, San Francisco, baggageman brought out baggage hoist and in coming alongside bus he misjudged clearance and struck rear of bus.

8-12-34—Redwood City, bus on arterial street, when nearing intersection saw other car coming into intersection from left slow down as though to make boulevard stop. When bus in intersection other car came on without making stop and made left turn alongside of bus and hit bus license plate on left front fender.

Infractions Resulting in Discipline

4-7-30—Warned that further speeding would mean dismissal.

9-29-31—Laid off 5 days account violation Rule 23, failing to check load, left passenger behind.

2-10-32—Operating schedule without proper emergency equipment—Bonus revoked 60 days.

759 8-31-35—Driver carried express shipment by Gilroy. Driver requested permission and did pay ship'er's claim in lieu of discipline affecting bonus.

10-16-35—Violated cashfare rule. Picked up passenger at Atascadero and carried to San Luis Obispo before cutting cash fare—5 demerits assessed.

11-2-35—Failed to register in and report number of passengers picked up and discharged and number arrival San Francisco—3 demerits.

Other Infractions

8-10-31—Warned on account of failure to post name plate.

7-19-32—No name plate posted.

1-28-34—Driver operating Salinas turn-around, arrived Salinas 9:47 P. M. having 4 hour lay-over, scheduled return leaving Salinas 1:50 A. M. When in restaurant Sager was gambling, betting 25¢ and 50¢ a corner on a pin ball game and was observed in booth pouring whiskey into glass which he drank.

6-19-34—Insurance inspector claimed Sager speeding near Gilroy—not conclusively proven.

10-29-35—Operative reported Sager driving speed of 50 to 55 mph, but did not think reckless.

761 *Respondent's Exhibit 2*

Driver Sager's report of accident

* * * * * * *

3. Name of Driver, V. R. Sager. Address, San Francisco, California.

4. Date, March 7th, 1936, at hour of 6:50 P. M. Hours driver on duty prior to accident ____.

5. Nearest City, Colma, Calif. Accident in County of San Francisco, State, California.

6. Direction Bus Traveling, North. Other Car, North.

7. Owner of Other Car or Property, L. Harnish. Address, Savoy Hotel, S. F.

8. Make of Other Car, Chrysler. License No. 4-K-3149. Motor No, ____

9. Driver of Other Car, L. Harnish. Address, as above.

10. Operator's License, 0679265. Date Issued ____ Age ____ Sex ____. Driving Experience ____

11. Passengers in Bus: L. Arsenio, 1425 Taylor Street, San Francisco. Robt. Hetteringter, 32 Grant Avenue, San Francisco. Iris Wellington. Mary Caulho, 829 Leavenworth Street, San Francisco. Jack Stanley, Cadillac Hotel, 380 Eddy Street, San Francisco. Anne Bennett, 2231 Shattuck Avenue, Berkeley, California. F. Shayland, 238 Eddy Street, San Francisco, Phone FR. 0101.

762 21. Total Number Passengers in Bus, 65.

22. Names and Addresses of All Passengers in Bus Injured: None.

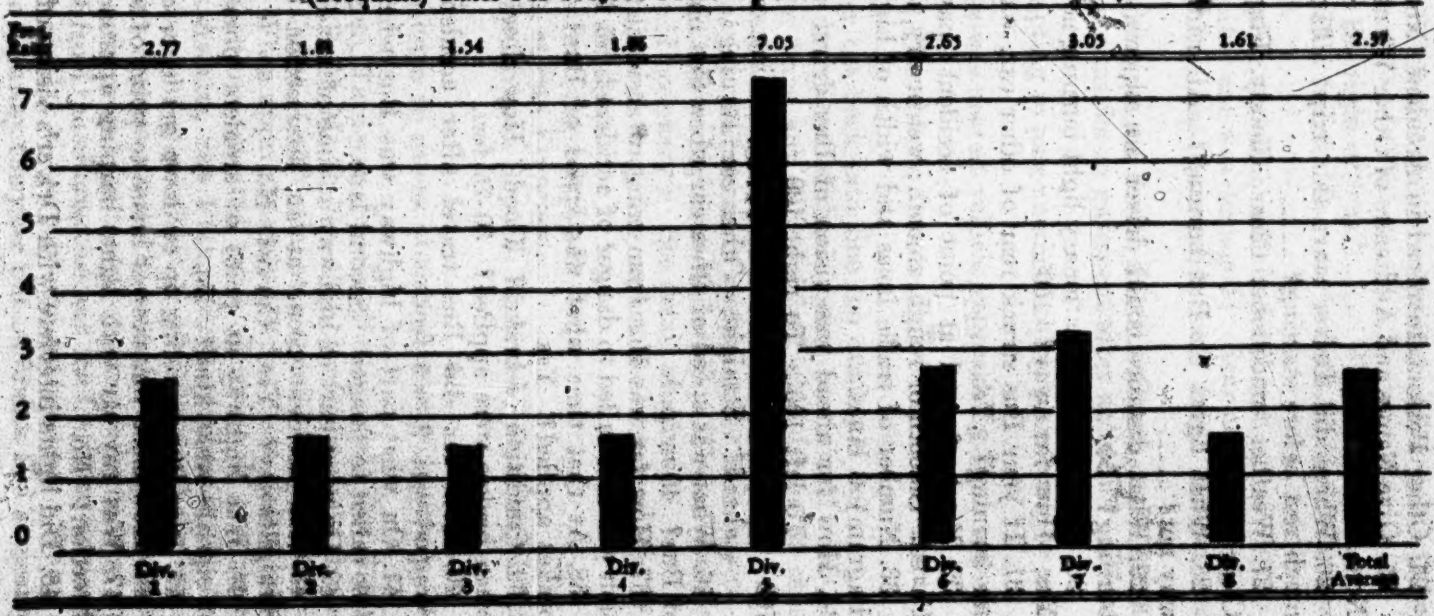
BOARD'S EXHIBIT 47

PACIFIC GREYHOUND LINES

ACCIDENT SUMMARY

MONTH OF DECEMBER—1955

(Frequency Rates Per 100,000 Miles Operated Based on All Accidents)



23. Other Persons Injured: (In Other Car) (Street Car) (Pedestrians): None.

24. Other Persons Involved in Accident: None.

25. Give Names and Addresses of Other Witnesses and Bystanders: None.

26. Where did Driver start this trip? Tanforan Track. How much rest before starting? ____.

27. Weather conditions: Clear, Cloudy, Foggy, Raining, Snow? Clear.

28. What lights on Bus burning? All running lights. If not, why not? ____.

29. What distance could driver see objects on road with lights burning? 500'.

30. Was there any stationary light burning near point of accident? Yes. How far away? 150'.

31. If your Bus struck rear of other car, was tail light of other car burning? Yes.

32. Kind of road at point of accident: paved, dirt or gravel? Paved. Smooth or rough, smooth; wet or dry, dry.

33. Number of traffic lanes and width of highway (also show on diagram) 6 lanes.

34. How far ahead was vision of Bus driver unobstructed? 500'. To left 100'. To right 100'.

763 35. Was Bus driver stopping, turning, or proceeding straight ahead? Straight. Other car, turning.

36. What was speed of other car when first observed? 10 m. p. h., of Bus? 40 m. p. h.

37. How far was Bus from point of accident when Driver's attention was first called to danger of accident? 75 feet.

38. At that time what was speed of Bus? 40 m. p. h. Were brakes applied? Yes.

39. Condition of brakes? Good. How close to point of accident when brakes were applied? 50–75 feet.

40. How far did Bus travel after accident before stopping? Stopped with 2 to 3 feet.

41. On what part of highway was Bus when Driver's attention first called to danger? Second lane.

42. On what part of highway at time of accident? Second lane.

43. Did accident occur at an intersection of highways? No. Straightaway? Yes. Curve? No.

44. Was highway at point of accident protected by traffic sign or signal—what kind? No.

45. Was Bus traveling up or down grade, or on level? Up grade.

46. How close was nearest house to point of accident? 50'.

47. Was any car with lights burning approaching from opposite direction? No.

48. Did lights interfere with Driver's vision of road? No.

764 49. How far was other car from point of accident when Driver first observed it? 50 to 75 feet.

50. What was speed of Bus at time of collision? 15 m. p. h. Other car? Stopped.

51. Which car had the right of way?..... Why?.....

52. What part of Bus struck other car? Left front fender and bumper.

53. What part of other car struck Bus? Rear end.

54. What part of other car was damaged? Rear end.

55. What part of Bus was damaged? Left front bumper and foglight broken.

56. Approximate damages to Bus? $10.00. Other car? $50.00.

57. What skid or tire marks on pavement after accident? (Measurements) None.

58. Was Bus attempting to pass another vehicle proceeding in same direction? No.

59. If so, how close was nearest vehicle approaching from opposite direction? xx.

60. How close did Bus driver operate Bus to left side of other vehicle? cc.

61. Did Bus driver cut back into line too quickly? cc.

62. Did Bus come in contact with car being overtaken? Yes.

63. Did Bus driver have any conversation with driver of other car involved in accident? Yes.

64. If so, what was it? Information necessary for this report.

65. State in Detail How Accident Occurred. (Use additional sheet of paper if necessary.) See detail attached.

765 66. The within and foregoing report has been read and is a true report of accident.

67. Driver's Signature (Signed) V. R. Sager.

68. Date, Mar. 7th, at San Francisco.

Report Accepted by Division Supt. J. W. Krug. Date March 7th, 1936.

STATEMENT ATTACHED TO DRIVER SAGER'S REPORT OF ACCIDENT

Driver V. R. Sager, Tanforan Special Northbound, Bus 678 at approximately 6:50 P. M. March 7th, 1936, proceeding northbound in center lane near Colma, California, at a speed of approximately 40 miles per hour. When approximately 150 feet from Colma intersection, Chrysler Roadster operated by L. Harnide of the Savoy Hotel on Van Ness Avenue, San Francisco, proceeding in the first lane of traffic at a speed of approximately 10 miles per hour cut at an angle of forty-five degrees across the second lane into the third lane. The cement curb protecting the street car tracks ends at approximately 150 feet from the intersection and the Chrysler cut across the second lane presumably to go into the intersection. When at the third lane of the highway Chrysler put on brakes and as near as

Driver Sager can ascertain stopped. Driver Sager was approximately 75 feet from the point of accident and applied his brakes.

When the bus had slowed down from a speed of approximately
766 40 miles per hour to a speed of approximately 15 miles per hour, Bus struck the Chrysler Roadster in the center of the rear end. Driver Sager stopped approximately 3 feet from the point of the accident and got out of his bus and took information necessary for this report and then proceeded on his schedule to San Francisco.

769 *Respondent's Exhibit 3*

"STATE OF CALIFORNIA,
County of Monterey, ss:

I, Charles Eldridge, being first duly sworn, depose and say:

That I am twenty-two (22) years of age, and reside at No. 222 North Maine Street, Salinas, Monterey County, California; that I am now, and for more than one (1) year last past, have been continuously employed by the Blanco Salinas Valley Dairy Company as a dairy delivery man; that on Wednesday, April 24, 1935, at about 6:45 A. M., while in the course of my employment, I drove a 1931, 1½ ton Dodge delivery truck into the alley in the rear of the Pacific Greyhound Lines depot at Salinas, California, and there parked it for the purpose of delivering milk to the Greyhound Tavern in the same building with said Pacific Greyhound Lines depot; that after parking the truck I made delivery of milk to the said Greyhound Tavern, and upon my return from making such delivery I found the rear end of Pacific Greyhound Lines Bus No. 238 up against the left rear fender of the truck I had parked in the alley, and that the left rear fender of said truck had been pushed in against its body.

That at said time and place I met V. Sager, driver for Pacific Greyhound Lines, who told me that he had just backed Pacific Greyhound Lines bus No. 238 into my truck; that he gave me his name and the license number of the Pacific Greyhound Lines bus, and I gave him my name, the name of the company for which I was driving, and the license number of the truck I was driving; that said V. Sager also furnished me with his Pacific Greyhound Lines driving number; that we had a short conversation together in which the said V. Sager told me that the accident was all his fault, but that he had reasons why he did not wish to report, or have anyone else report the accident to his company; that he told me that if the accident were reported it would undoubtedly result in his losing his driver's bonus, and possibly result in his losing his employment with Pacific Greyhound Lines; that he told me if I would not report the accident to his company that he would pay for all damages occasioned by reason of his backing into the truck I had been driving.

That this same day I made a full and complete report to the Manager of Blanco Salinas Valley Dairy Company, who instructed me to have the truck repaired at the Salinas Auto Body Works, and to have it handled as a cash transaction; that, accordingly, on the

29th day of April, 1935, I took the said truck to the Salinas Auto Body Works for repairs; that the Salinas Auto Body Works
770 made the necessary repairs, for which they were paid in cash the sum of Four ($4.00) Dollars; that attached hereto is a work copy of the invoice showing the repairs and cash charge made for this work; that within ten (10) days or two (2) weeks after the repairs were made I met the said driver V. Sager and notified him of the amount charged for the repairs, but that to this date he has never reimbursed me or my company therefor.

(Signed) CHARLES ELDRIDGE.

Subscribed and sworn to before me this 9th day of April 1936.
(Notarized:)

_____ _____,

Notary Public in and for the County of Monterey, State of California."

772 *Respondent's Exhibit 6*

My name is Lew Harnish, occupation butler, working extra, age about 54, married and reside at Savoy Hotel, San Francisco.

On Saturday, March 7, about 6:45 P. M., I was driving north on Mission Street (or Highway 101) in my Chrysler roadster, California license ____, model 1930, with my wife. I was proceeding in the third lane north next to the street car tracks, and had reached the intersection of San Pedro Street.

I was traveling about 8 mph, intending to make a "U" turn at the end of the concrete curbing around the street railway "right of way" to go back south to a flower shop. I gave an arm signal for some 100 yards of my intention to turn left. When my car had started into the left turn, and while the rear end was still in the third lane (northbound) a Pacific Greyhound bus struck my car on the left rear end and rear bumper, tearing off bumper, and rear tire support, and damaging gas tank and body. The filler cap was mashed on gas tank, and cannot now get gas into car, which also does not steer as it should.

I do not know the speed of the bus, but the impact moved
773 my car about 8 or 10 feet north. The bus, after striking my car, had swerved to the right and stopped some 4 feet to the right and behind my car.

I and my wife got out of our car, finding the bus driver still in his bus. I asked the bus driver if he had any brakes, he said "yes," but I thought you stopped. I told him I had not stopped. Policeman Kusher came to the scene of accident, had bus driver pull off highway to right, and I also pulled over behind the bus. Policeman secured our names, the bus driver secured my name, took license number, and departed. I took bus license, No. 2826, and driver said

his name was Sager. I secured no other names. After the accident we went home to the Savoy Hotel as my wife was shocked and skinned her right elbow probably by being thrown against the right door. I was not hurt, except for a stiff neck. There was nothing about the injuries to either of us that necessitated calling a doctor.

The accident occurred about dusk, my headlights and tail light were burning, and still burning after the accident.

I do not recall whether the street lights were burning.

This is a correct and true statement to the best of my knowledge and belief as to how the accident occurred.

My car may be seen at the Economy Auto Park, about 350 Turk Street, S. F.

(Signed) LEW HARNISH.

3/7/36.

EARL HENSLEY.

774 *Respondent's exhibit 23*

NOTICE OF TERMINATION OF EMPLOYMENT

Duplicate for employee.
Name of Employee (print last name first)—Sager, Vincent R.
Position or Nature of Work—Driver.
Date of Termination—March 13, 193__.
Date of Employment. If after Jan. 1, 1936____.

Reason for Termination

[ ] Left Voluntarily____.
[x] Discharged. Responsibility of Accident (Speeding).
[ ] Laid off—Why?
[ ] Other Reasons—Explain____.
Average Weekly Wage—$48.00.
Number of Hours for Normal Work Week—48.
Average Number of Weekly Hours Worked During Past 52 Weeks—48 hrs. per wk.
Total Number of Weeks During the Previous 104 Weeks for Which Contributions Were Made____.
Note—If under $30.00 show actual amount, if over $30.00 state: "In excess of $30.00 per week."
I hereby acknowledge that my employment terminated for the above reason—Not obtainable—Signature of employee.
Name of Employer—Pacific Greyhound Lines.
Street & Number—75 5th Street.
Post Office—San Francisco.
By—J. W. Krug. Title.

776 *Respondent's exhibit 88*

Pacific Greyhound Lines

Valuable Package Label 177012

From L. Kopsho, Long Beach, Cal.
To Treasurer
Address San Francisco, Calif.
Instructions: This label must be manifested on driver's record of way bills and handled and receipt secured for in same manner as express.

TREASURER, PACIFIC GREYHOUND LINES,
San Francisco, Calif.

777 [File endorsement omitted.]

In United States Circuit Court of Appeals for the Ninth Circuit

8453

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

PACIFIC GREYHOUND LINES, INC., A CORPORATION, RESPONDENT

Petition for the enforcement of an order of the National Labor Relations Board

Filed Feb. 1, 1937

To the Honorable the Judges of the United States Circuit Court of Appeals for the Ninth Circuit:

The National Labor Relations Board (hereinafter referred to as the Board) pursuant to the authority conferred upon it by the provisions of an Act of Congress approved July 5, 1935, Public No. 198, 74th Congress, 29 U. S. C. Sec. 151 et seq., known as the National Labor Relations Act, respectfully petitions this Honorable Court for the enforcement of a certain order issued by said Board in a proceeding instituted by it against respondent, Pacific Greyhound Lines, Inc. Said proceeding is known upon the records of the Board as Case No. C-134, the title thereof being "In the Matter of Pacific Greyhound Lines, Inc. and Brotherhood of Locomotive Firemen and Enginemen." In support of this petition, the Board respectfully shows:

1. Respondent, Pacific Greyhound Lines, Inc., is and at all times herein mentioned was a corporation organized under and existing by virtue of the laws of the State of California, and has and maintains its principal office and place of business, and transacts
778 business in the City and County of San Francisco in the State of California. Respondent also has and maintains district

offices and places of business in Los Angeles, California, and Portland, Oregon.

2. By reason of the matters alleged in paragraph 1 hereof, this Court has jurisdiction of this petition by virtue of Section 10 (e) of the National Labor Relations Act.

3. On the 29th day of May, 1936, a charge having been theretofore duly filed with the Board, through its Regional Director for the Twentieth Region at San Francisco, California, by the Brotherhood of Locomotive Firemen and Enginemen, the Board issued its complaint in said proceeding, and on the 10th day of June, 1936, the Board issued its amended complaint in said proceeding, which complaint and amended complaint alleged that respondent had engaged in and was engaging in certain unfair labor practices affecting commerce within the meaning of the National Labor Relations Act, and together with notices of hearing thereon, were duly served upon respondent.

On the 25th day of June, 1936, the Board ordered a charge which had theretofore been filed with the Board through its Regional Director for the Twenty First Region at Los Angeles, California, by the Brotherhood of Locomotive Firemen and Enginemen, transferred to the Twentieth Region for the purpose of consolidation with the proceeding already instituted in the Twentieth Region as above described.

On the 28th day of July, 1936, the Board issued a second amended and consolidated complaint (hereinafter referred to as the complaint), alleging that respondent had engaged in and was engaging in certain unfair labor practices affecting commerce within the meaning of the National Labor Relations Act, which said complaint together with a notice of hearing thereon, was duly served upon respondent.

779 4. Thereafter, commencing on July 23, 1936, and continuing to and including July 29, 1936, the Board, by a Trial Examiner, duly held a hearing upon said complaint pursuant to due notice thereof. At said hearing respondent moved to dismiss said complaint on constitutional grounds and also moved to dismiss the complaint for failure to state facts constituting a complaint against the National Labor Relations Act. The Trial Examiner denied both motions. The respondent then filed its answer to said complaint. Thereupon testimony and other evidence with respect to the allegations set forth in said complaint were adduced by the parties to said proceeding. During the course of the hearing respondent moved to dismiss the complaint on the ground that it was not based upon a charge by an organization of which the Board is cognizable or has jurisdiction over, which motion was denied. At the close of the Board's case, the respondent made three separate motions to dismiss: One was based on constitutional grounds; another was based on the ground that the charges should have been filed by employees affected by the alleged unfair labor practices; and the third was based on the ground that the proof did not sustain the allegations of the complaint.

Each of these motions was in turn denied. At the close of the hearing respondent moved to strike certain testimony and also moved to dismiss the complaint on the ground that the proof showed that respondent had not committed acts contrary to the National Labor Relations Act, which motions were denied. At the close of the hearing counsel for the Board made a motion to conform the pleadings to the proof, which motion was taken under advisement by the Trial Examiner.

5. On the 25th day of August, 1936, in accordance with Rules and Regulations of the Board, the Trial Examiner filed an Intermediate Report granting said motion of counsel for the Board to conform the pleadings to the proof, upon which the Trial Examiner had reserved decision at the hearing, and containing findings of
780 fact and recommendations with respect to the allegations set forth in said complaint, which said Intermediate Report was duly served upon respondent. No exceptions to the Intermediate Report were filed by the respondent.

6. Thereafter on the 18th day of December, 1936, the matter having come before the Board for determination, and the Board having duly considered the matter including the said Intermediate Report, and being sufficiently advised in the premises, and being of the opinion upon all of the testimony and evidence that respondent had been and then was engaged in certain unfair labor practices affecting commerce within the meaning of said National Labor Relations Act, duly stated its findings of fact and issued and entered the following order directed to respondent:

ORDER

On the basis of the findings of fact and conclusions of law, and pursuant to Section 10, subdivision (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondent, Pacific Greyhound Lines, Inc., its officers and agents, shall:

1. Cease and desist:

(a) From discouraging membership in the Brotherhood of Locomotive Enginemen and Firemen, or any other labor organization of its operators, or encouraging membership in the Drivers' Association, Pacific Greyhound Lines, or any other labor organization of its operators, by discriminating against its operators in regard to hire or tenure of employment or any term or condition of employment;

(b) From dominating or interfering with the administration of the Drivers' Association, Pacific Greyhound Lines, or with the formation or administration of any other labor organization of its operators, and from contributing financial or other support to the Drivers' Association, Pacific Greyhound Lines, or any other labor organization of its operators, except that nothing in this paragraph shall prohibit the respondent from permitting its operators to confer with it during working hours without loss of time or pay;

(c) From in any other manner interfering with, restraining, or coercing its operators in the exercise of their rights to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the National Labor Relations Act.

2. Take the following affirmative action, which the Board finds will effectuate the policies of the Act:

(a) Offer to Vincent R. Sager and Henry A. Camy immediate and full reinstatement to their former positions, without prejudice to any rights and privileges previously enjoyed by them;

781 (b) Make whole Vincent R. Sager and Henry A. Camy, and each of them, for any losses of pay they have suffered by reason of their discharge, by payment to each of them, respectively, of a sum of money equal to that which each of them would normally have earned as wages from the date of his discharge to the date of the respondent's offer of reinstatement, computed at the average weekly earnings of each for six months immediately preceding such discharge, less the amount earned by each since the date of his discharge;

(c) Withdraw all recognition from the Drivers' Association, Pacific Greyhound Lines, as the representative of its operators for the purposes of dealing with the respondent concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work; and completely disestablish the Drivers' Association, Pacific Greyhound Lines, as such representative;

(d) Immediately notify each and every one of its officers and agents in each of its divisions as well as each and every one of the representatives of the Drivers' Association, Pacific Greyhound Lines, that the Drivers' Association, Pacific Greyhound Lines, is so disestablished and that it will refrain from any recognition thereof;

(e) Post notices to its operators in conspicuous places in all of its terminals on each of its divisions stating: (1) that the Drivers' Association, Pacific Greyhound Lines, is disestablished as the representative of its operators for the purpose of dealing with it with respect to grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work, and that it will refrain from any recognition thereof; (2) that it will cease and desist in the manner aforesaid; and (3) that such notices will remain posted for a period of at least thirty (30) consecutive days from the date of posting.

7. The said order was duly issued and served upon respondent and is and at all times since its said issuance and service has been in full force and effect.

8. The Board is informed and believes that respondent has not complied with and does not intend to comply with the said order of the Board heretofore set forth in paragraph 6 hereof, and the Board accordingly alleges upon information and belief that respondent will

not comply with the said order unless and until required to do so by this Court.

Wherefore the Board prays this Honorable Court that it cause notice of the filing of this petition and transcript to be served upon respondent, and that this Court take jurisdiction of the pro-
782 ceeding and of the questions determined therein, and make and enter upon the pleadings, testimony, and evidence, and the proceedings set forth in said transcript and upon said order made thereupon, a decree enforcing in whole said order of the Board and requiring respondent, its officers, agents, and representatives to comply therewith.

(s) J. Warren Madden, *Chairman*,
(s) Donald Wakefield Smith, *Member*,
(s) Edwin S. Smith, *Member*,
National Labor Relations Board.

Charles Fahy,
General Counsel,
National Labor Relations Board, Washington, D. C.
Robert B. Watts,
Associate General Counsel,
National Labor Relations Board, Washington, D. C.

783 [*Duly sworn to by J. Warren Madden et al.; jurat omitted in printing.*]

784 In United States Circuit Court of Appeals for the Ninth Circuit.

Before Wilbur, Denman, and Haney, Circuit Judges

Order of submission

May 17, 1937

Ordered petition to enforce order of National Labor Relations Board argued by Mr. Philip Levy, Attorney, National Labor Relations Board, and Mr. A. Norman Somers, Senior Litigation Attorney, National Labor Relations Board, counsel for petitioner, and by Mr. Ivan Bowen, counsel for respondent, and submitted to the court for consideration and decision.

785 In United States Circuit Court of Appeals for the Ninth Circuit

Order directing filing of opinions and filing and recording of order

July 16, 1937

By direction of the court, ordered that the opinion, and the opinion of Haney, Circuit Judge, dissenting in part, be forthwith filed by

the clerk, and that an order be filed and recorded in the minutes of this court in accordance with the majority opinion rendered.

786 In United States Circuit Court of Appeals for the Ninth Circuit

No. 8453

NATIONAL LABOR RELATIONS BOARD, PETITIONER

vs.

PACIFIC GREYHOUND LINES, INC., A CORPORATION, RESPONDENT

Upon Petition for the Enforcement of an Order of the National Labor Relations Board

Before WILBUR, DENMAN, and HANEY, Circuit Judges

Opinion

Filed July 16, 1937

WILBUR, *Circuit Judge:* After notice and hearing the National Labor Relations Board made an order and has applied to this court by petition for the enforcement of its order in conformity with the National Labor Relations Act. The jurisdiction of the Board to make the order is conceded and the provisions of the order to cease and desist contained in paragraph 1, subs. (a), (b), and (c), are not questioned by the respondent. Paragraph 2 of the order deals with the discharge and reinstatement of two employees, Vincent R. Sager and Henry A. Camey. With reference to Sager respondent contends that he was discharged on account of a rear-end collision for which Sager, the driver, was responsible, but apparently concedes that there was substantial evidence supporting the conclusion of the Board that Sager was discharged on account of his brotherhood affiliation.

With reference to the discharge of Henry A. Camey the respondent contends he was discharged, not because of his activities in behalf of the Brotherhood, but because he lost a piece of freight on March 7, 1936, and a valuable letter on May 4, 1936, which had been entrusted to him while he was operating one of its busses. In support of this conclusion it is claimed that Camey admitted the loss of the piece of freight on March 7, 1936, and its value was deducted from his pay with his consent. He seemed willing to admit the loss of the letter on May 4, 1936, until under the leading questions propounded by a member of the Board he developed facts concerning the handling of this letter which cast some doubt upon his responsibility for
787 the loss. We are not concerned, however, with the facts concerning the loss as there is no doubt that the charge that the letter was lost by Camey was made in good faith. The question which concerns us is as to whether or not the discharge of Camey

which followed was in fact because of his activities in organizing the Brotherhood, as found by the Board.

The proof of such motive is wholly circumstantial. The respondent contends that the evidence does not support this finding. He was discharged by J. H. Hodge, Assistant General Manager, who testified that at the time he discharged Camey he did not know that Camey was a member of the Brotherhood, or engaged in any activity in connection with it, but did know he was a member of the Employers and Drivers Association. Respondent claims the only knowledge that Hodge had of the association of Camey with the Brotherhood was that two years before Camey was discharged he revoked his power of attorney to the Brotherhood and resigned from that organization. It is also claimed that the renewed activity of Camey after he rejoined the Brotherhood in October or November 1935 occurred in Fresno, California, and as the office of Assistant Manager Hodge was in Los Angeles he was not likely to learn of such activities.

The question is a difficult and a serious one. It is difficult because in the teeth of a denial the proof of motive must depend upon acts and circumstances which can never be conclusive and when motive is attributed to an artificial person it involves probing the intent of all the officers concerned. It is a serious one because the right of an employer to discharge an employee is an inherent attribute of freedom and essential to the management of a business. The responsibilities of a common carrier for the negligence or mistakes of its employees is so great that the utmost freedom in selection and discharge of such employees should not be curtailed even if otherwise constitutionally permissible. The Board carefully weighed the conflicting evidence and stated its conclusions and the reasons therefor with careful attention to the difficult problem facing it. We refer to its decision for such analysis, as it sufficeth to say that there is substantial evidence to support its conclusion that the real motive for the discharge of Camey was because of his union activities and that the loss of the two items charged against him was merely a pretext seized upon to get rid of a competent and efficient driver. If the evidence went no further than to show the union activities of Camey, and his discharge, it would have been clearly insuf-
788 ficient, but the evidence covered the entire relationship of the parties over a long period of time, including warnings of possible discharge for trival offenses if labor union activities were not suspended. Much of this was before the passage of the Wagner Act, but nevertheless admissible to show the attitude of the respondent's officials toward the effort to secure members of the Brotherhood from among its employees.

We conclude without further review of the evidence that there is substantial evidence to support the conclusion of the Labor Relations Board that both Sager and Camey were discharged because of labor union activities on behalf of the Brotherhood and that

the order of the Board directing their restoration and payment of back pay less wages earned for that reason must be sustained.

In paragraph 2 of the order of the National Labor Relations Board, subs. (c), (d), and (e), down to the second subdivision of (e), deal with the relation of the respondent to the Drivers' Association and directs that the respondent withdraw all recognition of the Drivers' Association as a representative of its operators, and that it "completely disestablish the Drivers' Association, Pacific Greyhound Lines, *as its representative*" [italics ours], and that it notify its officers and agents that the Drivers' Association "is so disestablished and that it will refrain from any recognition thereof and that it post notices to that effect," etc.

The Drivers' Association was not made a party to the proceedings. The amended complaint formulated by the Board as the basis of its action, contained allegations to the effect that the Pacific Greyhound Drivers Association had been initiated, formed, dominated, and interfered with, by the respondent and that the respondent had contributed support to that organization. It also alleges that by this means the respondent had interfered with and restrained and coerced its employees in the rights guaranteed them by the National Labor Relations Act and had thus been guilty of unfair labor practices. It alleged also that by forming the Drivers Association it had engaged in unfair labor practices within the meaning of Sec. 8, sub. 2 of said Act.

Notice of the hearing upon this complaint was issued and served upon the respondent. The Drivers Association was not notified of the hearing. It is clear that the provisions of the order which require the respondent both to refrain from discrimination with relation to labor organizations and from dominating and interfering with the administration of the Drivers Association is inconsistent with the order requiring them to disestablish the Drivers Association, if the word "disestablish" implies anything more than mere non recognition. But even as so limited there is no basis in the complaint for an order determining with what agency the respondent must engage in collective bargaining. The statute has a comprehensive scheme for the determining of the Union which shall be the bargaining agency which is to represent the employees. No such question is involved in this proceeding which was limited to the effect of the discharge of employees and the effect of favoritism and domination of a labor union of its employees, commonly called a "company union." The National Labor Relations Board exercised its statutory power when it rectified the evils which were charged in the complaint and it went beyond those powers when it attempted to exclude the Drivers Association as a bargaining agency for its employees. That matter was not germane to the complaint before the Board and consequently was not involved in the proceeding and was unauthorized. (See National Labor Relations Board vs. Pennsylvania Greyhound Lines, decided by the Circuit Court of Appeals 3rd Circuit, June 15, 1937 not yet

789

reported.) When the time comes to determine the proper agency for collective bargaining on behalf of the employees it may be necessary for the Board to determine such representative. Until that time the employer has done its full duty when it has refrained from interfering with such labor unions as may have been formed by its employees whether with or without its cooperation.

The application is denied as to those provisions dealing with the recognition of the Drivers Association contained in paragraph c, above mentioned and the terms of the notice required to be posted by the respondent by subd. 2 and 3, subd. e, par. 2, will be amended to include only the statement that it "will cease and desist" in accordance with paragraph 1 to be incorporated therein.

The order with reference to the reparations does not fix the amount to be paid to Sager and Camey. It does fix a standard for determining the rate of pay applicable to them since their discharge, but does not determine the amount to be deducted therefrom by reason of wages they may have earned since their discharge. No objection is raised to the form of the order on this account but before the enforcement order is issued by this Court this amount should be supplied and included in the order. We assume that no difficulty will be found in ascertaining the amount. If the parties cannot agree within ten days upon the amount to be included in the enforcement order, or to be paid, appropriate steps will be taken for its determination before the order is made.

790 In United States Circuit Court of Appeals for the Ninth Circuit

[Title omitted.]

Opinion

Filed July 16, 1937

HANEY, *Circuit Judge*, Dissenting in part: The National Labor Relations Act provides that petitioner "is empowered * * * to prevent any person from engaging in any unfair labor practice * * * affecting commerce." 29 U. S. C. A. § 160 (a).

I concur in the holding that there is substantial evidence supporting the finding that respondent had engaged in an unfair labor practice as defined in 29 U. S. C. A. § 158, and that therefore the Board's order with respect to Sager and Camey should be enforced. I likewise concur in the holding that the part of the Board's order requiring respondent to cease from dominating, interfering with, or contributing financial or other support to the company union, inasmuch as the practice prohibited is an unfair labor practice as defined in 29 U. S. C. A. § 158 (2).

Another unfair labor practice as defined is for an employer "To refuse to bargain collectively with the representatives of his employees, subject to the provisions of section 159 (a) of this title." In the latter section, the representatives of the employees mentioned

are said to be those "designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes." The Board ordered respondent to:

791 "(c) Withdraw all recognition from [the company union] as the representative of its operators for the purposes of dealing with the respondent concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work; and completely disestablish [the company union] as such representative;

"(d) Immediately notify each and every one of its officers and agents in each of its divisions as well as each and every one of the representatives of [the company union], that [the company union] is so disestablished and that it will refrain from any recognition thereof;

"(e) Post notices to its operators in conspicuous places in all of its terminals on each of its divisions stating: (1) that [the company union] is disestablished as the representative of its operators for the purpose of dealing with it with respect to grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work, and that it will refrain from any recognition thereof; (2) that it will cease and desist in the manner aforesaid; and (3) that such notices remain posted for a period of at least thirty (30) consecutive days from the date of posting."

It seems clear to me that the Board has jurisdiction to order as above recited, if some union, other than the company union, was the representative of respondent's employees as stated in 29 U. S. C. A. § 158 (5). Such other union would be such representative if it was "designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes." 29 U. S. C. A. § 159 (a). But the Board would not have jurisdiction to make the order above recited, if the company union was the chosen representative. So far as the record is concerned, it is not shown which union is the chosen representative. There certainly is no evidence that the Brotherhood is the chosen representative, nor that the company union is not the chosen representative. Therefore the Board exceeded its jurisdiction by the provisions above recited.

I dissent from that part of the opinion which requires the amount of the back pay to be included in our order. The act does not require it, and such action is a useless formality.

792 To summarize: In my opinion the order of the National Labor Relations Board, now before us, should be enforced in its entirety except those portions thereof designated 2 (c) and 2 (d) and 2 (e–1). I think the portions of the order thus excepted and designated are not supported by either law or fact and that we should not order enforcement thereof.

[File endorsement omitted.]

793 Form No. 282.

Return on service of writ

UNITED STATES OF AMERICA,
Northern District of California, ss:

I hereby certify and return that I served the annexed order upon petition for the enforcement of an order of the National Labor Relations Board on the therein-named Pacific Greyhound Lines, Inc., a corporation, respondent by handing to and leaving a certified copy thereof with H. D. Lucas, V. P. & General Counsel for respondent personally at San Francisco, California, in said District on the First day of September, A. D. 1937.

GEORGE VICE,
U. S. Marshal.
By BERNARD J. WARD, Jr.,
Deputy.

MD#22815.

Marshal's fees, travel, $0.10; service, $2.00; total, $2.10. U. S. Government Printing Office 1933. 7-279.

(Endorsed:) Return on Service of Writ. September 1, 1937. Paul P. O'Brien, Clerk.

794 In United States Circuit Court of Appeals for the Ninth Circuit

No. 8453

NATIONAL LABOR RELATIONS BOARD, PETITIONER

vs.

PACIFIC GREYHOUND LINES, INC., A CORPORATION, RESPONDENT

Order upon petition for the enforcement of an order of the National Labor Relations Board

Filed July 30, 1937

The National Labor Relations Board, hereinafter referred to as the Board, having petitioned this Court for the enforcement of its Order in the above entitled proceeding, pursuant to Section 10 (e) of the National Labor Relations Act, and having certified and filed in this Court a transcript of the entire record in the proceeding before the Board, including the pleadings, testimony, and evidence upon which said Order was entered and the findings and Order of the Board, and notice of the filing of the said petition and transcript having been served upon respondent, and this Court having taken jurisdiction of the proceeding and of the questions determined therein.

Now then, upon the pleadings, testimony, evidence, and proceedings set forth in such transcript and upon the said Order made therein, it

is Ordered, Adjudged, and Decreed that the respondent, Pacific Greyhound Lines, Inc., its officers and agents, shall:

795 1. Cease and desist:

(a) From discouraging membership in the Brotherhood of Locomotive Enginemen and Fireman, or any other labor organization of its operators, or encouraging membership in the Drivers' Association, Pacific Greyhound Lines, or any other labor organization of its operators, by discriminating against its operators in regard to hire or tenure of employment or any term or condition of employment;

(b) From dominating or interfering with the administration of the Drivers' Association, Pacific Greyhound Lines, or with the formation or administration of any other labor organization of its operators, and from contributing financial or other support to the Drivers' Association, Pacific Greyhound Lines, or any other labor organization of its operators, except that nothing in this paragraph shall prohibit the respondent from permitting its operators to confer with it during working hours without loss of time or pay;

(c) From in any other manner interfering with, restraining, or coercing its operators in the exercise of their rights to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the National Labor Relations Act.

796 2. Take the following affirmative action in order to effectuate the policies of the National Labor Relations Act:

(a) Offer to Vincent R. Sager and Henry A. Camy immediate and full reinstatement to their former positions, without prejudice to any rights and privileges previously enjoyed by them.

(b) Make whole Vincent R. Sager and Henry A. Camy, and each of them, for any losses of pay they have suffered by reason of their discharge, by payment to each of them, respectively, of a sum of money equal to that which each of them would normally have earned as wages from the date of his discharge to the date of the respondent's offer of reinstatement, computed at the average weekly earnings of each for six months immediately preceding such discharge, less the amount earned by each since the date of his discharge. It having been stipulated between the parties hereto, and represented to this Court, that the sum of money due and payable according to the foregoing terms up to and including the 22nd day of July, 1937, is, in the case of Vincent R. Sager, the sum of Two Thousand Dollars ($2,000.00), and in the case of Henry A. Camy, the sum of Two Thousand Five Hundred Forty Three Dollars and Forty One Cents ($2,543.41), it is Ordered that such sums be forthwith paid, together with such additional sums as may accrue according to the said terms prior to the date that reinstatement shall be offered, as above set out.

797 (c) Post notices to its operators in conspicuous places in all its terminals on each of its divisions stating: (1) that it

will cease and desist in the manner aforesaid; and (2) that such notices will remain posted for a period of at least thirty (30) days from the date of posting.

It is further ordered that sections (c) and (d) of paragraph number 2 of said Order of the Board, and subsection number (1) of section (e) of paragraph number 2 of said Order be, and each of them is hereby, set aside.

Signed at San Francisco, California, this 28 day of July, 1937.

CURTIS D. WILBUR,
Senior Circuit Judge.

[File endorsement omitted.]

798 In United States Circuit Court of Appeals for the Ninth Circuit

No. 8453

[Title omitted.]

Receipt and release of Vincent R. Sager

Filed July 23, 1937

For and in consideration of the sum of Two Thousand Dollars ($2,000.00) this date paid unto me by Pacific Greyhound Lines as successor in interest to Pacific Greyhound Lines, Inc., the receipt of which is hereby acknowledged, I hereby release the said Pacific Greyhound Lines, Inc., and Pacific Greyhound Lines, their successors and assigns, from all sums of money due or owing, debts, accounts, actions, proceedings, claims, and demands whatsoever or howsoever the same may be incurred arising out of my discharge from Pacific Greyhound Lines, Inc. and out of that certain action now pending in the United States Circuit Court of Appeals for the Ninth District entitled, "National Labor Relations Board, Petitioner, vs. Pacific Greyhound Lines, Inc., Respondent, No. 8453," which I now have or which I, my heirs, executors, or administrator, but for these presents, could, would, or might at any time or times hereafter have, even though the said Court orders a larger sum paid me than the amount for which I have settled my claims.

Dated at San Francisco, California, this 17th day of June, 1937.

VINCENT R. SAGER.

Witness:
A. GOODMILLER.

[File endorsement omitted.]

799 [Clerk's certificate to foregoing transcript omitted in printing.]

800 In Supreme Court of the United States

Stipulation as to record

It is hereby stipulated and agreed by and between the attorneys for the above named parties that the printed record in the above case shall consist of the following:

1. Second amended and consolidated complaint, together with notice of hearing, issued by National Labor Relations Board July 8, 1936; answer of Pacific Greyhound Lines, Inc., to second amended and consolidated complaint, dated July 28, 1936; decision, findings of fact, conclusions of law, and order of the National Labor Relations Board, dated December 18, 1936.

2. Such parts of the testimony and exhibits in the hearing before the National Labor Relations Board as were printed by the respective parties and submitted to the court below in accordance with the order of said court concerning the printing of records and briefs.

3. Petition for enforcement of an order of the National Labor Relations Board, dated January 27, 1937; opinion and opinion dissenting in part, of the United States Circuit Court of Appeals for the Ninth Circuit, filed July 16, 1937; judgment or decree of said Court, entered July 16, 1937; and other proceedings in said Court.

801 It is further stipulated and agreed that the remainder of the record in the above case need not be printed, but may be considered by the Court and may be referred to in oral argument or briefs by counsel for either party.

CHARLES FAHY,
General Counsel,
National Labor Relations Board.

Dated at Washington, D. C. this 31st day of August, 1937.

IVAN BOWEN,
Attorney for Respondent Rand Tower,
Minneapolis, Minn.

Dated at Minneapolis, Minn., this 13 day of September, 1937.

802 Supreme Court of the United States

Order allowing certiorari

Filed November 22, 1937

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Ninth Circuit is granted, and the case is assigned for argument immediately following No. 413.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

[Endorsement on cover:] File No. 41985. U. S. Circuit Court of Appeals, Ninth Circuit. Term No. 504. National Labor Relations Board, Petitioner vs. Pacific Greyhound Lines, Inc. Petition for a writ of certiorari and exhibit thereto. Filed October 14, 1937. Term No. 504 O. T. 1937.

U. S. GOVERNMENT PRINTING OFFICE, 1938

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In the Supreme Court of the United States

OCTOBER TERM, 1937

No. —

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

PACIFIC GREYHOUND LINES, INC.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

The Solicitor General, on behalf of the National Labor Relations Board, prays that a writ of certiorari issue to review so much of the judgment of the United States Circuit Court of Appeals for the Ninth Circuit, entered in the above cause on July 28, 1937 (R. 405), as denies in part the petition of the National Labor Relations Board for the enforcement of its order against the Pacific Greyhound Lines, Inc., made pursuant to the National Labor Relations Act.

OPINIONS BELOW

The findings of fact and the order of the National Labor Relations Board are not reported but may be found at pp. 377–399 of the record. The

opinion of the Circuit Court of Appeals (R. 400) is unreported.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered July 28, 1937 (R. 405). The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925, and Section 10 (e) of the National Labor Relations Act.

QUESTION PRESENTED

Whether—upon a finding that respondent instituted, formed and sponsored a labor organization of its employees, dominated and interfered with its administration, and contributed financial and other support to it, contrary to Section 8 (2) of the National Labor Relations Act—the National Labor Relations Board has the power under said Act, in addition to ordering respondent to cease and desist from such interference, to order respondent (a) to withdraw all recognition from said organization as the representative of its employees for purposes of collective bargaining and (b) to post notices stating that such organization is so disestablished and that respondent will refrain from any such recognition thereof.

This question is the same as that raised by the Board's petition for certiorari, filed this term, to review the decision of the Circuit Court of Appeals

for the Third Circuit in *National Labor Relations Board* v. *Pennsylvania Greyhound Lines, Inc.* (No. 413).

STATUTE INVOLVED

The statute involved is the National Labor Relations Act (Act of July 5, 1935, c. 372, 49 Stat. 449, U. S. C. Sup. II, Title 29, Sec. 151 *et seq.*). The pertinent provisions are as follows:

> SEC. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection.
>
> SEC. 8. It shall be an unfair labor practice for an employer—
>
> (1) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7.
>
> (2) To dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it: * * *
>
> (3) By discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: * * *
>
> * * * * * * *
>
> SEC. 10. (c) The testimony taken by such member, agent or agency or the Board shall be reduced to writing and filed with the

Board. Thereafter, in its discretion, the Board upon notice may take further testimony or hear argument. If upon all the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action, including reinstatement of employees with or without back pay, as will effectuate the policies of this Act. * * *

STATEMENT

Upon charges filed by the Brotherhood of Locomotive Firemen and Enginemen, a labor organization, the National Labor Relations Board—pursuant to Section 10 (b) of the National Labor Relations Act—issued and served upon respondent, through its Regional Director at San Francisco, on May 29, June 10 and July 8, 1936, respectively, a complaint, an amended complaint and a second amended complaint, together with notices of hearing (R. 374, 11).[1] The second amended complaint alleged that respondent had engaged in certain un-

[1] The amended complaint differed from the original complaint only in one minor particular, not material here. The second amended complaint consolidated with the original proceeding another proceeding against the same company which had been instituted in another Region (see R. 12).

fair labor practices affecting interstate commerce, contrary to the provisions of Section 8, subdivisions (1), (2) and (3) of the National Labor Relations Act (R. 11–19). Beginning July 23, 1936, a hearing was held before a Trial Examiner duly designated by the Board (R. 375).

On August 25, 1936 the Trial Examiner filed an Intermediate Report, in which he found that respondent had engaged in the unfair labor practices charged (R. 376). Respondent filed no exceptions to this Report (R. 376). On December 18, 1936 the Board issued its findings of fact and order (R. 377–399).

The Board found, in substance, that respondent operated a motor bus transportation system in interstate commerce (R. 377, 378); that respondent, contrary to Section 8 (1) of the Act, had urged, persuaded and warned its operators not to join the Brotherhood of Locomotive Firemen and Enginemen and had threatened them with discharge if they joined or remained members of that organization (R. 380–382); and that respondent had discharged two employees because of membership and activities in the Brotherhood, contrary to Section 8 (3) of the Act (R. 382–392). In addition the Board found that in 1933 respondent had established an organization of its employees known as the Drivers' Association, Pacific Greyhound Lines (R. 392); and that respondent was dominating and interfering in various ways with the administration

of this organization and was contributing financial and other support to it, contrary to Section 8 (2) of the Act (R. 392–396).

Upon the basis of these findings the Board ordered respondent to cease and desist (1) from discouraging membership in the Brotherhood or any other labor organization, or encouraging membership in the Drivers' Association or any other labor organization, by discriminating against its employees in regard to hire, tenure or terms of employment; (2) from dominating or interfering with the administration of the Drivers' Association, or with the formation or administration of any other labor organization of its employees, and from contributing financial or other support to the Drivers' Association or any other labor organization; (3) from in any other manner interfering with, restraining or coercing its employees in the exercise of their rights to self-organization and collective bargaining (R. 398). In addition, paragraph (2) of the Board's order required respondent to offer reinstatement with back pay to the two employees unlawfully discharged, and further required that respondent (R. 399):

> (c) Withdraw all recognition from the Drivers' Association, Pacific Greyhound Lines, as the representative of its operators for the purposes of dealing with the respondent concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work; and completely dis-

establish the Drivers' Association, Pacific Greyhound Lines as such representative;

(d) Immediately notify each and every one of its officers and agents in each of its divisions as well as each and every one of the representatives of the Drivers' Association, Pacific Greyhound Lines, that the Drivers' Association, Pacific Greyhound Lines is so disestablished and that it will refrain from any recognition thereof;

(e) Post notices to its operators in conspicuous places in all of its terminals on each of its divisions stating: (1) that the Drivers' Association, Pacific Greyhound Lines, is disestablished as the representative of its operators for the purpose of dealing with it with respect to grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work, and that it will refrain from any recognition thereof; (2) that it will cease and desist in the manner aforesaid; and (3) that such notices will remain posted for a period of at least thirty (30) consecutive days from the date of posting.

On February 1, 1937, the Board, pursuant to Section 10 (e) of the Act, petitioned the Circuit Court of Appeals for the Ninth Circuit for enforcement of the foregoing order (R. 2). On July 28, 1937, the Circuit Court entered its judgment enforcing the order in part but declining to approve or enforce subdivisions (c) and (d), and

clause (1) of subdivision (e), of paragraph (2) (quoted above).

SPECIFICATION OF ERRORS TO BE URGED

The Circuit Court of Appeals erred:

(1) In holding that subdivisions (c) and (d), and clause (1) of subdivision (e), of paragraph (2) of the Board's order were unauthorized by the Act.

(2) In refusing to enforce and in setting aside subdivisions (c) and (d), and clause (1) of subdivision (e), of paragraph (2) of the Board's order.

REASONS FOR GRANTING THE WRIT

The issue in this case is the same as that presented in the petition for certiorari in *National Labor Relations Board* v. *Pennsylvania Greyhound Lines, Inc.*, No. 413, already on file. The reasons for granting the writ, as set forth in the *Pennsylvania Greyhound* petition, are equally applicable here and need only be briefly summarized.

I. The decision of the Circuit Court of Appeals is untenable and in conflict with the decisions of this Court in *Texas & New Orleans R. Co.* v. *Brotherhood of Railway Clerks*, 281 U. S. 548, and *Virginian Ry. Co.* v. *System Federation No. 40*, 300 U. S. 515.

The question presented is one of statutory construction. Does the Act authorize the National Labor Relations Board to require the withdrawal of recognition, as a bargaining representative,

from company-dominated organizations not freely chosen as the representative of the employees? That the Board has such power appears clearly from (a) the language of the statute, (b) its legislative history, and (c) the rulings of this Court in the *Texas & New Orleans* and *Virginian* cases.

(a) The Board is expressly authorized by the Act, upon a finding that any person has engaged in an unfair labor practice, to include in its order a requirement that such person "take such affirmative action, including reinstatement of employees with or without back pay, as will effectuate the policies of this Act." (Sec. 10 (c).) The Board found, and the finding was upheld by the court below, that respondent had established the Drivers' Association, dominated and interfered with its administration, and contributed financial and other support to it. The Association, accordingly, was not the freely chosen representative of respondent's employees; nor would it attain such a status upon the cessation of affirmative acts of interference by respondent. Since the Association was established and existed only by reason of respondent's unlawful acts, continued recognition of the Association as the representative of respondent's employees would perpetuate the effect of the unlawful conduct, seriously hamper the free selection of representatives by the employees, and discourage the growth of genuine collective bargaining. As the Board found, disestablishment of

the Association as the employees' representative was the only effective means of wiping out the effects of respondent's unfair labor practices and assuring to the employees the full freedom in the choice of representatives guaranteed them by the Act. The Board's order requiring withdrawal of recognition and disestablishment is therefore clearly warranted by the language of the statute authorizing the Board to "take such affirmative action * * * as will effectuate the policies of this Act."[2]

(b) The report of the House Committee on Labor shows definitely that Section 10 (c) was intended to authorize the Board to compel employers to refrain "from bargaining with an organization corrupted by unfair labor practices." (H. Rep. 972, 74th Cong., 1st Sess., page 21.)

(c) In the *Texas & New Orleans* and the *Virginian* cases, this Court enforced the Railway Labor Act (which did not contain statutory authorization as specific as that in Section 10 (c) of the National Labor Relations Act) by ordering withdrawal of recognition and disestablishment of company-dominated unions. The Railway Labor Act, as construed in the *Texas & New Orleans* case,

[2] "Withdrawal of recognition" and "disestablishment" mean only that respondent is required to cease dealing with the Association as the bargaining representative of its employees. The order does not direct the dissolution of the Association nor prevent it from establishing in the future, by appropriate showing before the Board, that it has become the free and uncoerced choice of respondent's employees.

was the chief precedent for the National Labor Relations Act, and there can be no question that the latter Act was intended to authorize use of the sanctions approved by this Court in the *Texas* case.

The reasoning of the court below in this case differs somewhat from that of the Third Circuit in the *Pennsylvania Greyhound* case. In this case it was held that the requirement of withdrawal of recognition and disestablishment of the Drivers' Association was "not germane to the complaint before the Board and consequently was not involved in the proceeding and was unauthorized" (R. 402).

The court below misconceived the scope of Sections 8 (1) and 8 (2), under which the Board was proceeding. Those sections prohibit interference with the employees' right of self-organization and with their right to bargain collectively through representatives of their own choosing. The action of the Board was germane to those sections, rather than to Section 9 (c), under which the court indicated that the Board ought to have been proceeding. Section 9 (c) provides election machinery for determining the choice of representatives as between *freely chosen* contestants, qualified to represent the employees. Here no question arises under that section, inasmuch as the Drivers' Association is not the freely chosen representative. The Board was seeking to establish the basic rights of self-organization and free selection of representatives without which the

machinery of Section 9 (c) can have no significance. It found that the continued recognition by respondent of its own *alter ego*—brought into existence by its own unlawful conduct—would discourage the development of genuine self-organization and representation. The action which it took was, therefore, appropriate under Sections 8 (1) and 8 (2).

This is demonstrated by the analogy of the Railway Labor Act and the *Texas & New Orleans* case. The Railway Labor Act of 1926 (before the 1934 amendments) simply forbade "interference, influence, or coercion" by the employer with his employees' right of self-organization (44 Stat. 577, Sec. 2, Third), but imposed no enforceable obligation to bargain collectively. It thus contained the equivalent of Sections 8 (1) and 8 (2) (though stated in general language), but not of Sections 9 (c) or 8 (5). Nevertheless this Court upheld the order of the District Court, which disestablished the company-dominated union in order to effectuate the prohibition of interference and coercion in Section 2, Third.

The court below adverts to the fact that the Drivers' Association was not formally notified of the hearing in this case (R. 402). The same argument was made in the *Pennsylvania Greyhound* case, and the matter is discussed in the petition for writ of certiorari filed therein. The contention has even less substance here, inasmuch as a leading official in the Drivers' Association was actually

present and testified at the hearing (R. 290, 291; see also R. 279).

II. The question raised by the decision below is of paramount importance in the administration of the Act. About one fourth of the charges of unfair labor practices filed with the Board involve the issue of company domination of labor organizations (First Annual Report of the National Labor Relations Board (1936), page 34). In such cases the Board has repeatedly ruled, as in the case at bar, that an employer found to have established and dominated a labor organization must withdraw recognition from such organization.* Unless the Board is permitted to exercise this power—plainly granted to it by Congress—to remove all traces of company interference and domination, the purposes and policies of Sections 8 (1) and 8 (2) will be frustrated.

CONCLUSION

Wherefore, it is respectfully submitted that this petition for a writ of certiorari to review the judgment of the Circuit Court of Appeals for the Ninth Circuit should be granted.

STANLEY REED,
Solicitor General.

CHARLES FAHY,
General Counsel,
National Labor Relations Board.

OCTOBER, 1937.

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*The Board had, up to October 1, 1937, made the same ruling in twenty-two other cases, in addition to the instant case.

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In the Supreme Court of the United States

OCTOBER TERM, 1937

No. 504

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

PACIFIC GREYHOUND LINES, INC.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR NATIONAL LABOR RELATIONS BOARD

OPINIONS BELOW

The opinion of the United States Circuit Court of Appeals for the Ninth Circuit (R. 268–272) is reported in 91 F. (2d) 458. The findings of fact and the order of the National Labor Relations Board (R. 36–61) are reported in 2 N. L. R. B. 431.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered July 28, 1937 (R. 273–275). The peti-

tion for a writ of certiorari was filed on October 14, 1937, and was granted on November 22, 1937. The jurisdiction of this Court rests on Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925, and Section 10 (e) of the National Labor Relations Act.

QUESTION PRESENTED

Whether—upon a finding that respondent instituted, formed and sponsored a labor organization of its employees, dominated and interfered with its administration, and contributed financial and other support to it, contrary to Section 8 of the National Labor Relations Act—the National Labor Relations Board has the power under said Act, in addition to ordering respondent to cease and desist from such interference, to order respondent (a) to withdraw all recognition from said organization as the representative of its employees for purposes of collective bargaining and (b) to post notices stating that such organization is so disestablished and that respondent will refrain from any such recognition thereof.

This question is the same as that raised in *National Labor Relations Board v. Pennsylvania Greyhound Lines, Inc., and Greyhound Management Co.* (No. 413).

STATUTE INVOLVED

The statute involved is the National Labor Relations Act (Act of July 5, 1935, c. 372, 49 Stat. 449,

U. S. C., Sup. II, Title 29, Sec. 151 *et seq.*). The pertinent provisions are as follows:

SEC. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection.

SEC. 8. It shall be an unfair labor practice for an employer—

(1) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7.

(2) To dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it; * * *

(3) By discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization; * * *

* * * * * *

SEC. 10 (c) The testimony taken by such member, agent or agency or the Board shall be reduced to writing and filed with the Board. Thereafter, in its discretion, the Board upon notice may take further testimony or hear argument. If upon all the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board

shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action, including reinstatement of employees with or without back pay, as will effectuate the policies of this Act. * * *

STATEMENT

Upon charges filed by the Brotherhood of Locomotive Firemen and Enginemen (R. 36–37), a labor organization, the National Labor Relations Board, through its Regional Director at San Francisco, issued and served upon respondent, on May 29, June 10, and July 8, 1936, respectively, a complaint, an amended complaint, and a second amended complaint, together with notices of hearing (R. 13–17, 36–37).[1] The second amended complaint alleged that respondent had engaged in certain unfair labor practices affecting interstate commerce, contrary to the provisions of Section 8, subdivisions (1), (2), and (3), of the National Labor Relations Act (R. 15–17). Beginning July 23, 1936, a hearing was held before a Trial Examiner duly designated by the Board (R. 38).

[1] The amended complaint differed from the original complaint only in one minor particular, not material here. The second amended complaint consolidated with the original proceeding another proceeding against the same company which had been instituted in another Region (see R. 13).

On August 25, 1936, the Trial Examiner filed an Intermediate Report, in which he found that respondent had engaged in the unfair labor practices charged (R. 39). Respondent filed no exceptions to this Report (*ibid.*). On December 18, 1936, the Board issued its findings of fact and order (R. 36–61).

The Board found that respondent, a subsidiary of the Greyhound Corporation and certain western railroads, operated a motor bus transportation system in interstate commerce in seven far western states (R. 39–40). Its findings with respect to the unfair labor practices charged against respondent were preceded by findings—essential to an understanding of the present issue—concerning the history of respondent's relation with labor organizations of its employees since 1933. These findings, none of which was challenged by the court below, may be summarized as follows:[2]

During the summer and fall of 1933, many of respondent's drivers applied for membership in the Brotherhood of Locomotive Firemen and Enginemen (R. 41, 81), an independent railroad labor organization which had just opened its ranks to motor coach operators (R. 41, 63, 236). Organization activity for the Brotherhood steadily continued until

[2] Of the record references in this statement, the first, or only, page reference is to the findings of the Board, unless otherwise expressly stated. Any additional references are to the supporting testimony.

"at one time during the fall of 1938, 264 of the respondent's 425 operators had signed authorization certificates empowering the Brotherhood to represent them for the purpose of collective bargaining with the respondent" (R. 41, 78). The respondent at once undertook an intensive campaign to check the activities of the Brotherhood (R. 41, 70–72, 82–83, 118–120, 122–123, 127–130, 140–141, 195–196, 247–248). "Operators were urged, persuaded and coerced to refrain from joining the Brotherhood and threatened with discharge if they did join" (*ibid.*). As part of this campaign, respondent in August and September, 1933, fostered the organization and growth of the Drivers Association, Pacific Greyhound Lines (*ibid.*).

On August 30, 1933, respondent conducted among the employees on all its divisions an election of representatives (R. 54, 81–82, 224–225, 236–239). The employees chosen were transported to San Francisco at respondent's expense, and without loss of pay, and at a meeting there were addressed by the respondent's president, W. A. Travis (R. 54, 225, 227). Travis told the representatives that they were free to "form" any organization they wished, and then said: "but, I believe, for your benefit, that if you have an organization of your own that you can do better, and that it will help you out more than going in some outside organization that don't know anything about the bus business" (R. 54, 225). The representatives accepted this "advice" (*ibid.*). Thereupon, under the guid-

ance and with the assistance of respondent's officers (R. 55, 226-228)—including Judge Lamm, respondent's general counsel, L. D. Jukes, the general manager, and Travis (R. 55, 203, 204-205, 226-228)—a constitution and by-laws of the organization were drafted, together with "a working agreement" between the Association and the respondent (*ibid.*). By the terms of the constitution and by-laws, which are still in effect (R. 55, 229, 250-253), the representatives present automatically assumed control of the Association (R. 55, 250-252).

The Drivers' Association, once organized, was used by respondent as a weapon against the Brotherhood. The Board found that respondent, in its efforts to establish the Association, "left no stone unturned; operators on the various divisions of its lines were urged, persuaded, threatened and coerced into joining" (R. 55). "The record is replete with testimony," it stated (*ibid.*), "showing that Travis was as active in promoting membership in the Drivers' Association as were the representatives of the organization." This activity of the respondent reached its culmination in April, 1934, after the Brotherhood, confident of possessing a majority of respondent's employees, had petitioned the National Labor Board to conduct an election (R. 41-42, 88-89). At a meeting of operators called by the respondent ten days before the election, Travis attacked the Brotherhood and urged support for the Drivers' Association (R. 42, 88, 119-

120, 247–248). Testimony supporting the Board's findings shows that respondent's officials presented to various leaders of the Brotherhood, ready for signature, revocations of their authorizations to the Brotherhood, together with applications for admission to the Drivers' Association (R. 119, 140–141, 247). Respondent's campaign achieved its immediate purpose. The Drivers' Association was successful in the election (R. 42, 89); and for a time the Brotherhood movement died down among the respondent's operators (*ibid.*).

In August, 1934, several of respondent's operators organized an independent Brotherhood of Motor Coach Operators. This movement, apparently springing from dissatisfaction with the Drivers' Association, was prompted by suggestions from respondent's president Travis, made during the election campaign, that respondent would not be hostile to an independent labor organization which was free from railroad affiliations (R. 42, 89–90, 239–240). Very soon thereafter, the president and secretary of the new organization were discharged; and this movement, too, died down (R. 42, 91). The old National Labor Relations Board, after complaint and hearing, found that the men had been discharged because of their union activities, and ordered their reinstatement;* but

* *In the Matter of Pacific Greyhound Lines, Inc., and Charles H. Perryman and Milton L. Seeman*, 2 N. L. R. B. (old) 837.

the respondent did not comply with the order (R. 42, 91, 240-241).

In the summer of 1935, following the passage of the National Labor Relations Act, respondent's operators commenced a third effort to affiliate with an independent labor organization—this time, once again, with the Brotherhood of Locomotive Firemen and Enginemen (R. 42, 91, 92). After this movement had resulted in "a huge increase in membership" in the Brotherhood and "a proportionate decrease in membership of the Drivers' Association" (R. 43, 92), respondent for the third time entered upon a campaign in support of the Association. At the Board hearing, respondent's counsel admitted that respondent had urged, persuaded, and warned its operators not to join the Brotherhood (R. 44). The Board referred to testimony that respondent's general manager addressed a meeting of the operators in the fall of 1935, stating that he was going to speak to them "two ways * * * officially, and unofficially":

> "Q. What did he say officially?
>
> "A. He said we could join any damn union we wanted to; * * *
>
> "Q. What did he say unofficially?
>
> "A. * * * first he told us that Mr. Travis had always been opposed to organized labor; had never dealt with it; and that he said he would step out of the President's chair * * * rather than to write a contract with the Brotherhood. He told us then

> that he didn't think we would ever get any benefits by being a member of any labor organization." (R. 42, 131.) * * *

Persuasion and warning, the Board found (R. 43-44), went to the extent of coercion and threats of discharge. By March, 1936, "the respondent was so violently expressing its hostility toward the Brotherhood that meetings of the Brotherhood, which had theretofore been conducted openly, were thereafter conducted secretly. * * * Membership * * * was also kept secret" (R. 44, 112). In March, April, and May, 1936, respondent at length discharged three of the most vigorous organizers for the Brotherhood (R. 43–50, 69, 105, 142). Two of these discharges were involved in the present proceedings; and the Board found that these men "were discharged because of their membership in and their activities for the Brotherhood" (R. 43–54).

Immediately after the last discharge, "Brotherhood activity among the respondent's operators ceased. The operators felt that such activity would result in their discharge as it had in the cases of Thompson, Sager, and Carny" (R. 51).

The Board found that respondent, in addition to sponsoring the Drivers' Association in contests with other labor organizations, had continuously interfered with and dominated its internal administration (R. 55, 57). It stated (R. 57):

> The fundamental structures upon which the Drivers' Association depends for its existence, the constitution and by-laws and the

so-called working agreement with the respondent, are the creation of the respondent. By these instruments the respondent continues to force its operators to accept the type of representation which it has dictated. Such representation is obviously inadequate. The constitution and by-laws provide that only employees of respondent of at least one year's standing may become "representatives", i. e., members of the Board of Governors of the Drivers' Association (R. 55, 250–252). The Board found that the Association, being "compelled to deal with the respondent through representatives admittedly inexperienced in matters of collective bargaining", had obtained "only minor concessions" from it (R. 57).

By the terms of the so-called working agreement, any operator "who considers that an injustice has been done him in any matter" may take his grievance first to his supervisory officer and then to the respondent's president, but in all cases "the decision of the president shall be final" (R. 55, 252–253). This provision, the Board found, "concentrates all the power over the destiny of its employees in the respondent's hands" (R. 57). Thus, one of respondent's own officials testified that "when the respondent and the men cannot agree on a certain matter, the status quo remains, and the Drivers' Association neither does nor can do anything about it" (R. 57). This same power was ever employed to effect changes in the working agreement itself. Respondent apparently did not

regard this agreement as binding upon it (R. 57, 192–194, Resp. Exs. 15, 16, 17). It felt that it could change the agreement unilaterally and did so repeatedly (*ibid.*). Its attitude in this respect is illustrated by a meeting of the Association held in August or September, 1935,[4] and attended by Hodge, an official of respondent (R. 56, 131–134). This meeting was described by the Board as follows (R. 56):

> At this meeting, called for the purpose of discussing working conditions, Hodge presented a plan proposed by the respondent, the particulars of which it is not necessary to discuss here, but the net effect of which was to favor the respondent's "Guarantee Men" to the detriment of the operators on its "On Call Board." Warren Macy testified at the hearing that there was no need for such a plan at the time it was proposed. The members of the Drivers' Association at the meeting unanimously voiced their disapproval of this plan. When it was suggested that a vote be taken, Hodge arose and informed the members present that "if Mr. Travis wanted it to go that way it would go that way, regardless of all the voting the drivers did at the meeting there." No vote was ever taken on the proposal, but the plan was nevertheless put into effect by the respondent, and was still in effect at the time of the hearing.

Respondent's officials frequently attended and addressed meetings of the Association (R. 56, 131–

[4] The Act went into effect July 5, 1935.

134, 230–231) and thereby exerted "a powerful pressure upon the members and representatives to do as the respondent bids" (R. 57). Respondent's officials took notes of the proceedings (R. 57, 133–134, 230–231).

Meetings of the members with their representatives were not regularly held; on some divisions no meetings had been held for over a year, on others none for a period of months (R. 56, 136, 139, 299–300, 231–232). Respondent supplied the Association with secretarial help, stationery and bulletin boards, and with suitable meeting quarters (R. 56, 198, 230–231). Members and representatives suffered no loss of pay for time spent at meetings (R. 56, 198–199, 220, 230), and were permitted to engage in organizing activities during working hours (R. 56, 220). Representatives of the Association received free transportation when organization affairs made travel necessary (R. 56, 198–199, 230). "The respondent takes an interest", the Board found, "in the elections conducted by the Drivers' Association and advises its employees as to who are the best candidates." (R. 56, 75.)

On the basis of the foregoing findings of fact, the Board concluded that respondent had interfered with its employees' right to self-organization in violation of Section 8 (1) of the Act, had discharged employees in order to discourage membership in the Brotherhood in violation of Section 8 (3), and had dominated and interfered with and contributed support to the Drivers' Association in

violation of Section 8 (2) (R. 58). It ordered respondent to cease and desist from each of these unfair labor practices (R. 60). In addition, it ordered the reinstatement with back pay of two of the discharged employees,* and ordered the withdrawal of recognition from the Drivers' Association (R. 60-61). The latter provisions of the order, which are the ones here in issue, required that respondents (R. 61):

> (c) Withdraw all recognition from the Drivers' Association, Pacific Greyhound Lines, as the representative of its operators for the purposes of dealing with the respondent concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work; and completely disestablish the Drivers' Association, Pacific Greyhound Lines as such representative.
>
> (d) Immediately notify each and every one of its officers and agents in each of its divisions as well as each and every one of the representatives of the Drivers' Association, Pacific Greyhound Lines, that the Drivers' Association, Pacific Greyhound Lines is so disestablished and that it will refrain from any recognition thereof.
>
> (e) Post notices to its operators in conspicuous places in all of its terminals on each of its divisions stating: (1) that the Drivers' Association, Pacific Greyhound Lines, is disestablished as the representative of its operators for the purpose of dealing with it

* No complaint was made as to the third.

with respect to grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work, and that it will refrain from any recognition thereof; (2) that it will cease and desist in the manner aforesaid; and (3) that such notices will remain posted for a period of at least thirty (30) consecutive days from the date of posting.

In support of this portion of its order the Board said (R. 58):

> * * * There can be but one way of remedying the unlawful conduct in this case and that is by ordering a complete withdrawal of all recognition by the respondent of the Drivers' Association as the representative of its operators, in addition to ordering the cessation of such interference, domination, and support. What we said in In the Matter of Wheeling Steel Corporation and The Amalgamated Association of Iron, Steel, and Tin Workers of North America et al., Case No. C–3, decided May 12, 1936, is particularly applicable here:
>
> "Simply to order the respondent to cease supporting and interfering with the Councils would not set free the employee's impulse to seek the organization which would most effectively represent him. We cannot completely eliminate the force which the respondent's power exerts upon the employee. But the Councils will, if permitted to continue as representatives, provide the respondent with a device by which its power may now be made effective unobtrusively, al-

> most without further action on its part. Even though he would not have freely chosen the Council as an initial proposition, the employee, once having chosen, may by force of a timorous habit be held firmly to his choice. The employee must be released from these compulsions. Consequently the respondent must affirmatively withdraw recognition from the Departmental and General Councils, as organizations, for the purpose of collective bargaining upon behalf of its employees."

On February 1, 1937, the Board, pursuant to Section 10 (e) of the Act, petitioned the Circuit Court of Appeals for the Ninth Circuit for enforcement of the foregoing order (R. 263–67). On July 28, 1937, the Circuit Court entered its judgment enforcing the order in part, but declining to approve or enforce subdivisions (c) and (d) and clause (1) of subdivision (e), of paragraph 2, quoted above. The basis of the court's refusal to enforce these provisions was its belief that the Board could not compel withdrawal of recognition from a company dominated organization until another union had been found to be the representative of the majority of the employees concerned.

In order to secure a reversal of so much of the judgment of the Circuit Court of Appeals as refused to enforce the Board's order, the Board filed a petition for writ of certiorari in this Court. No petition seeking reversal of the remainder of the Board's order has been filed by respond-

ent. Accordingly, the only issues before the Court relate to the validity of those provisions of the Board's order which the court below refused to enforce.

SPECIFICATION OF ERRORS TO BE URGED

The Circuit Court of Appeals erred:

(1) In holding that subdivisions (c) and (d) and clause (1) of subdivision (e) of paragraph 2 of the Board's order are not warranted by Section 10 (c) of the Act.

(2) In refusing to enforce and in setting aside subdivisions (c) and (d) and clause (1) of subdivision (e) of paragraph 2 of the Board's order.

SUMMARY OF ARGUMENT

The issue in this case is the same as that in *National Labor Relations Board* v. *Pennsylvania Greyhound Lines, Inc.*, No. 413. The Court is respectfully referred to the brief for the petitioner in that case for the main argument on behalf of the Board.

The differences between the methods of domination employed in the two cases are not accompanied by any differences in results or in the completeness of the domination achieved. Any factual distinctions between the two cases are thus entirely superficial.

ARGUMENT

The issue in this case is the same as that in *National Labor Relations Board* v. *Pennsylvania Greyhound Lines, Inc.*, No. 413. The Court is re-

specifically referred to the brief for the petitioner in that case for the main argument on behalf of the Board.

The Board's findings herein disclose the case of a company-dominated union in which domination has not gone to the same lengths of virtual merging of identity as in the *Pennsylvania Greyhound* case. Membership in the union was not automatic upon employment, but depended upon an affirmative act by the employee. Although respondent contributed to the financial support of the union, dues were paid. Meetings were held which the members could attend, although attendance was scanty and, as the Board found (R. 56), the members "have no voice in the determination of any policies." The employers in both cases shaped the organic structure of the union, but the respondent's action here was apparently less authoritarian than that of the respondents in the *Pennsylvania* case and it did not assume to retain for itself a legal power of veto over changes in the structure. The management's participation in the routine activities of the Association resulted, not from provision therefor in the organic law, but from custom and the natural weight of its influence.

Examination will demonstrate that these differences between the two cases are superficial rather than real.[1] The Board's findings permit no infer-

[1] The relationship between respondent and the Drivers' Association in this case is similar to that existing between the employers and the company-dominated unions in *Texas &*

ence that the differences in the methods of domination are paralleled by differences in its results or in its completeness. Indeed, the machinery of negotiation in the present case, involving no more than an appeal to the supervisory officer and then to the final authority of the president, was even more rudimentary than in the *Pennsylvania* case. Merely to direct the respondent to desist from further affirmative acts of interference will not make possible, through the Drivers' Association, collective bargaining in the sense contemplated by the Act. In both cases establishment of the company union as the purported representative of the employees has been accomplished by interference and coercion of the management. In neither case, therefore, can that union be said to be the free choice of the employees. Here, as in the *Pennsylvania* case, the respondent, if permitted to continue to treat with and recognize the Association, would be licensed to perpetuate the principal effect of its previous unlawful interference—the collective bargaining status which its recognition gave the Association. Here, as in the *Pennsylvania* case, continued recognition of the Association, supported by the weight of the respondent's long-continued approval of that organization, and its concomitant hostility to other unions, would operate as a powerful impediment to the development of

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New Orleans S. Co. v. Brotherhood of Railway Clerks, 334 U. S. 323, and *Virginian Ry. Co. v. System Federation No. 40*, 300 U. S. 515. In both of these cases this Court upheld orders disestablishing the company-dominated unions. See brief for the petitioner in No. 418, pages 34–40.

genuine collective bargaining through independent labor organizations.[1]

The present record lends peculiar force to the Board's conclusion as to the importance—in effectuating the purposes of the Act—of placing beyond respondent's power this means of influencing its employees' choice of representatives. For the Drivers' Association has long been used, not merely as a means of forestalling potential employee self-organization, but as a weapon in combatting actual self-organization. The Board's findings recount the persistent efforts of respondent's employees, at great personal cost, to obtain independent collective representation. The Drivers' Association has manifestly become a symbol of the respondent's hostility to such efforts. Thrice it has been utilized successfully to defeat them. The Association will not lose the weight of respondent's approval, in future contests with other labor organizations, merely because the approval has ceased to be expressed improperly. Nor will the respondent's employees, with this chief obstacle to an alternative organization still enjoying the status of recognition, obtain either

[1] Several of the most active organizers for the Brotherhood in the instant case testified that they retained their membership in the Drivers' Association (*e. g.*, R. 85–87, 140–142). This testimony illustrates at once the meaninglessness of employee membership in a company-dominated union as an expression of employee approval, and the value of such a union's established position as a means of gaining purported adherents.

freedom or assurance of freedom in opposing the Association. The testimony, as well as the findings, illustrates the acute difficulty of establishing whether an infraction of the rules or an accident by a driver who is an active union organizer, was a pretext or a just cause of his discharge (R. 45–54). In these circumstances the Board unquestionably could properly conclude that disestablishment of the Association, which had been maintained by respondent's unlawful action, would effectuate the purposes of the Act by removing a barrier to the development of genuine collective bargaining among the respondent's employees.

In the instant case the Circuit Court of Appeals took the position that the National Labor Relations Board had no authority to order withdrawal of recognition from a company-dominated union until it was shown that another organization represented a majority of the employees concerned—in other words, that such an order could only be made in a proceeding brought under Section 8 (5) of the Act to compel the employer to bargain collectively, after invocation of the machinery of Section 9 (c) for determining the representative chosen by the majority (R. 270–71). The same point was suggested by the Circuit Court of Appeals for the Third Circuit in the *Pennsylvania Greyhound* case, and the question is fully discussed in the petitioner's brief in that case. See brief for the petitioner in No. 413, pages 42 to 45.

The court below also adverted to the fact that no notice of hearing was served upon the Drivers' Association (R. 270). This point was also made in the *Pennsylvania Greyhound* case, and is discussed in our brief in that case at pages 46 to 50. The contention is even less substantial here, inasmuch as a leading official in the Drivers' Association was actually present and testified at the hearing before the Board (R. 228–239).

CONCLUSION

It is respectfully submitted that the judgment of the court below, in so far as it set aside and refused to enforce subdivisions (c) and (d) and clause (1) of subdivision (e) of paragraph 2 of the Board's order, should be reversed.

GOLDEN W. BELL,
Acting Solicitor General.
ROBERT L. STERN,
Special Assistant to the Attorney General.
HENRY M. HART, JR.
Attorney.

CHARLES FAHY,
General Counsel
ROBERT B. WATTS,
Associate General Counsel
LAURENCE A. KNAPP,
ROBERT S. ERDAHL,
Attorneys,
National Labor Relations Board

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1937.

No. 504.

NATIONAL LABOR RELATIONS BOARD,

Petitioner,

vs.

PACIFIC GREYHOUND LINES, INC.,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

BRIEF ON BEHALF OF RESPONDENT.

IVAN BOWEN,
(BOWEN, BEST, FLANAGAN & ROGERS)
Rand Tower,
Minneapolis, Minnesota,
H. C. LUCAS,
221 Pine Street,
San Francisco, California,
Attorneys for Respondent.

M. H. BOUTELLE,
1515 Rand Tower,
Minneapolis, Minnesota,
Of Counsel.

Hayward Brief Co., 601-7 Fourth Ave. So., Minneapolis

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Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

BRIEF ON BEHALF OF RESPONDENT.

This cause is before the Court on a writ of certiorari to the Circuit Court of Appeals of the Ninth Circuit, challenging the Order or Decree of that Court in proceedings instituted therein by the National Labor Relations Board to enforce an Order issued by the Board in ostensible conformity with the National Labor Relations Act, in so far as the decree of the Court failed to enforce certain provisions of the Board's order.

STATEMENT

The issue here presented is in many respects similar to that involved in the case of the Pennsylvania Greyhound

Lines, No. 413, pending concurrently before the Court.

The issues in the cause last mentioned challenge the authority and jurisdiction of the Labor Board on the grounds, (a) that the proceedings were instituted by a party lacking representative status or authority, and (b) that the employer and employee relation did not exist. These features are not involved in the instant case.

In both causes, the order of the Labor Board incorporated in its terms what was in effect a mandatory injunction requiring the disestablishment of an organization of its employees. In both, the respective Appellate Courts refused to enforce the mandatory injunction indicated.

In the instant case the organization of respondent's employees was created in 1933 and continued from the date of its organization down to and including the period covered by the hearings before the Labor Board. Following the enactment of what is commonly mentioned as the NIRA, including the labor provisions incorporated in that Act in Section 7a, efforts were made by the Brotherhood of Railroad Trainmen and the Brotherhood of Locomotive Firemen and Enginemen (fundamentally railroad labor organizations), to unionize respondent's employees. Out of the efforts thus inaugurated grew the controversies which gave rise to the proceedings here instituted by the Labor Relations Board.

ARGUMENT

As the issues now presented turn on the application of principles of law and these last have been fully considered in respondents' brief in the Pennsylvania Case, which is assigned for hearing at the same time as that here involved, reargument of those issues herein would entail repetition which seems both undesirable and unnecessary.

We think however, that the situations presented by the facts should, in certain particulars, be differentiated. The assumption here that the employer dominated the employees' organization is, to say the least, strained. That the employer frankly and openly expressed opposition to outside railroad labor unions may be conceded. That it equally frankly urged upon its employees the desirability of affiliating themselves with the employees' organization, may not be open to serious dispute. That it assumed to, or did in fact, undertake to dominate the freedom of action by the employees' organization in respect to the latter's representation of its members, seems tacitly if not expressly refuted in petitioner's brief.

It is true that stress is laid on the remarks testified to by a disgruntled employee as having been made by respondent's president at one or more meetings of the members of the employees' organization. We insist, however, that faced with the conditions which then confronted the executive mentioned, no sane executive, conscious of his responsibilities could have adopted any other reasonable course than that actually taken.

Let it be emphasized in this connection that respondent was called upon to face the prospects of the injection of a railroad labor organization into the administrative details of its operation. It is sufficiently shown by the evidence in the record and is a fact of such common knowledge as to justify the assumption that the court may take judicial cognizance thereof, that almost constant warfare has been waged on the part of the railroads against what for brevity we may term, bus systems, and that it was hardly to be expected that the hostility thus mentioned would not be reflected in the attitudes of railroad employees and their organizations.

As respects remarks ascribed to others of respondent's managerial force, made at meetings of the employees' organization, which in their last analysis amounted to little more than the statement that regardless of any action had by the organization, respondent's president would have the last word, we fail to perceive any substantial ground for criticism.

This, for the very obvious reason that no action had or taken by the employees' organization was binding on respondent without its consent. The principle has been clearly stated in the recent decisions of this Court, that the scope of the National Labor Relations Act is limited to the requirement of collective bargaining, not to the making of agreements.

As respects the specific provisions of the Labor Board's order, which the Appellate Court declined to enforce, we think that the frank concessions made in the brief of petitioner in the intant case in disclosing the real objective of those provisions, adequately demonstrate their arbitrary and unreasonable effects and confirms the conclusions of the lower court.

In other respects than those thus noted, respondent submits the present case on the grounds asserted in the Pennsylvania brief.

CONCLUSION

Certain features were alluded to in the Pennsylvania case intended to demonstrate that the issue there presented might be considered as of purely moot character.

In the instant case different features lead to a similar conclusion.

Following the Order of the labor here in question, on May 25, 1937, the Brotherhood of Locomotive Firemen &

Enginemen filed a petition with the Regional Director of the Labor Board, requesting an investigation and certification of representatives pursuant to Section 9 (c) of the National Labor Relations Act for employees of Pacific Greyhound Lines. Hearings were held by the Board on July 12th and 13th, 1937. By decision dated December 16, 1937, the Board directed that an election be held to ascertain representatives for the purpose of collective bargaining with Pacific Greyhound Lines and to determine whether the employees "desire to be represented by Brotherhood of Locomotive Firemen & Enginemen or Amalgamated Association of Street Electric Railway and Motor Coach Employees of America" or "by neither." Such election is now in process of being held (Case No. R-195, 4 NLRB 72).

In these circumstances it would seem to follow that the whole question would be resolved in such proceeding as the result of such election and that there is really nothing of substance as far as the questions raised on the present record are concerned.

United States vs. Anchor Coal Co., 279 U. S. 812.

Respectfully submitted,

IVAN BOWEN,
(BOWEN, BEST, FLANAGAN & ROGERS)
Rand Tower,
Minneapolis, Minnesota.
H. C. LUCAS,
221 Pine Street,
San Francisco, California,
Attorneys for Respondent.

M. H. BOUTELLE,
1515 Rand Tower,
Minneapolis, Minnesota,
Of Counsel.

SUPREME COURT OF THE UNITED STATES.

No. 504.—October Term, 1937.

National Labor Relations Board, Petitioner, *vs.* Pacific Greyhound Lines, Inc.	On Writ of Certiorari to the United States Circuit Court of Appeals for the Ninth Circuit.

[February 28, 1938.]

Mr. Justice Stone delivered the opinion of the Court.

This case, which comes here on certiorari to the Court of Appeals for the Ninth Circuit, presents the same issues discussed in No. 413, *National Labor Relations Board* v. *Pennsylvania Greyhound Lines, Inc.*, decided this day, but on a somewhat different state of facts. The only question requiring separate consideration is whether, in a case in which the National Labor Relations Board has ordered respondent to cease certain unfair labor practices, including the domination and financial support of a company union, the facts justify its further order that respondent withdraw all recognition of the union and give appropriate notice of the withdrawal to employees.

The Court of Appeals for the Ninth Circuit sustained the Board's findings and all of its order except the affirmative parts relating to withdrawal of recognition of the company union, which it set aside. 91 F. (2d) 458. The authority conferred on the Board by § 10 (c) of the National Labor Relations Act to direct withdrawal of employer recognition when such an order will carry out the policies of the National Labor Relations Act was considered and sustained in the *Pennsylvania Greyhound Lines, Inc.* case, *supra*. The question calling for attention here is whether the facts found by the Board afford a basis for its conclusion that the policies of the Act will be effectuated by the present order.

The findings show that respondent, an interstate carrier by motor bus, took an active and leading part in the organization in 1933 of the Drivers' Association, a labor organization of its employees; that respondent had since continuously interfered with and dominated

the internal administration of the Association, and contributed to its support; that through such domination it had obtained a "working agreement" with the Association in which it was stipulated that grievances of any employee should be presented first to his superior officer and then to respondent's president, whose decision should be final.

Before the enactment of the National Labor Relations Act, respondent twice made successful use of the Association as a means to forestall attempts to organize its employees, one in 1933 by the Brotherhood of Locomotive Engineers and Firemen, and another in 1934 by the employees themselves who sought to establish a Brotherhood of Motor Coach Operators. Respondent's officers were active in persuading, threatening and coercing employees to join or remain members of the Drivers' Association, and not to join the rival unions. In 1935, following the passage of the National Labor Relations Act, there was a renewed but unsuccessful attempt by respondent's employees to establish an organization affiliated with the Brotherhood of Locomotive Engineers and Firemen. The attempt was met by persuasions and warnings of respondent's employees, by its officers, not to join the new union, and by threats of discharge if they should join. The Board found that the respondent had engaged in unfair labor practices in violation of § 8 (1), (2), and ordered the cessation of these practices and withdrawal of respondent's recognition of the Drivers' Association.

While the formal provisions, in constitution and by-laws, for insuring employer control of the company union in the *Pennsylvania* case are wanting here, the record shows, as the Board found, that employer control of the Drivers' Association was none the less effective. During a period of three years it had been successfully used by respondent as an instrument for preventing three successive attempts for the organization by respondent's employees of a union free from company domination. In ordering withdrawal of recognition of the Drivers' Association by respondent, the Board pointed out that a mere order to cease the unfair labor practices "would not set free the employee's impulse to seek the organization which would most effectively represent him"; that continued recognition of the Drivers' Association would provide respondent "with a device by which its power may now be made effective unobtrusively, almost without further action on its part. Even

though he would not have freely chosen" the Association "as an initial proposition, the employee, once having chosen, may by force of a timorous habit, be held firm to his choice. The employee must be released from these compulsions."

Whether the continued recognition of the Drivers' Association by respondent would be a continuing obstacle to the exercise of the employees' right of self-organization and to bargain collectively through representatives of their own choosing, was an inference of fact which the Board could draw if there was evidence to support it. Section 10 (e); see *Swayne & Hoyt, Ltd.* v. *United States*, 300 U. S. 297. We cannot say that the Board's conclusion was without support in the evidence and in the subsidiary findings which respondent does not challenge.

Reversed.

Mr. Justice CARDOZO and Mr. Justice REED took no part in the consideration or decision of this case.

A true copy.

Test:

Clerk, Supreme Court, U. S.